AGREED RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1900.~~ 1901.

No. ~~138~~ 38.

CHRISTIAN SCHWARTZ ET AL., Petitioners,

vs.

JOHN S. DUSS ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

PETITION FOR CERTIORARI FILED JANUARY 17, 1901.
CERTIORARI AND RETURN MARCH 1, 1901.

(18,024.)

(18,024.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 231.

CHRISTIAN SCHWARTZ ET AL, Petitioners,

vs.

JOHN S. DUSS ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

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IN THE

UNITED STATES CIRCUIT COURT OF APPEALS.

THIRD CIRCUIT.

No. MARCH TERM, 1900.

CHRISTIAN SCHWARTZ, a citizen of the State of West Virginia; Antony Koterba, David Strohaker and Allen Shale, citizens of the State of Ohio, and G. L. Shale, a citizen of South Dakota,

vs.

JOHN S. DUSS, GOTTLIEB RIETHMUELLER, FRANZ GILLMAN, Conrad Hermansdoerfer, Edward Kellerman, Johanna Hermansdoerfer, Susie C. Duss, Karoline Molt, Katrina Nagel, Elizabeth Beck, Maria Diem, Barbara Boesch, Fredericka Muntz, Dorothea Hoehr, Regina Lautenschlager, Christiana Rall, Henry Hice and John Reeves, citizens of the State of Pennsylvania, and The Union Company, a corporation citizen of the State of Pennsylvania.

Among the rolls, records and judicial proceedings in the Circuit Court of the United States for the Western District of Pennsylvania, at No. 11 of November Term, 1894, may be found the following words and figures, to-wit:

DOCKET ENTRIES.

Bill filed June 27, 1894. Same day subpœna issued returnable to first Monday of August next. June 27, 1894, Service of subpœna accepted by C. S. Fetterman for all of the defendants.

1894, August 17th, Answer of Gottlieb Riethmueller, *et al* filed.

1894, August 17th, Answer of John S. Duss filed.

1894, August 17th, Answer of John Reeves filed.

1894, August 17th, Answer of the Union Company filed.

1894, August 17th, Answer of Henry Hice filed.

1894, September 1, Replication filed.

1894, October 15, Opinion of Court *sur* examiner's certificate with respect to the examination of the witness, John S. Duss, filed.

1895, February 28, Agreement of counsel filed, to request the Court to appoint W. W. Thompson, Esq., as examiner and master in the case.

And now, February 28th, 1895, at the request of all the parties in this suit, and in conformity with the foregoing agreement, the Court appoints W. W. Thompson, Esq., Examiner and Master in

this case with the authority specified in said agreement; the said Examiner and Master to act agreeably to the provisions of said agreement and subject to its terms:

1895, April 22nd, Order extending time for taking plaintiffs' testimony filed.

1895, December 21st, Petition of respondents for extension of time to take testimony and order thereon extending time to April 1st, 1896, filed.

1898, April 11th, Master's report and testimony filed.

1898, April 11th, Exceptions of complainants to Master's report filed.

1898, April 21st, Counsel for plaintiffs renew in court exceptions filed before the Master.

1898, December 5th, Death of Gottlieb Riethmueller, Conrad Hermansdoerfer, Edward Kellerman, Elizabeth Beck, Maria Diem, Dorothea Hoehr, and Regina Lautenschlager is suggested.

1898, December 5th, Argument of exceptions to Master's report begins.

1898, December 6th, Argument of exceptions to Master's report proceeds.

1898, December 7th, Argument of exceptions to Master's report concluded.

1899, February 13th, Opinion filed awarding a decree in favor of the defendants.

And now, this thirteenth day of February, 1899, upon consideration, it is ordered, adjudged and decreed that the plaintiffs' bill be and the same is hereby dismissed; and it is further ordered, adjudged and decreed that the plaintiffs pay the costs, including the Master's fee to be fixed *sec. reg.*, and which, together with his compensation as Examiner, shall be paid in the first instance by the defendants.

BY THE COURT.

1899, March 4th, the following order filed:

"PER CURIAM:

The compensation of W. W. Thompson, Esq., as Examiner and Master is fixed at the sum of three thousand dollars ($3,000).

M. W. ACHESON,
Circuit Judge."

Received Pittsburgh, March 15th, 1899, of John S. Duss, Trustee of the Harmony Society, the sum of three thousand ($3,000.00) dollars, the Master's fee fixed by the Court and which the said Trustee now advances under the terms of said decree.

W. W. THOMPSON.

1899, August 9th, Petition for appeal and assignments of error filed, appeal allowed.

1899, August 9th, Bond *sur* appeal in one thousand dollars approved and filed.

1899, August 9th, Citation awarded and issued.

1899, September 8th, Order filed extending time for filing record in the United States Circuit Court of Appeals to October 8th, 1899.

1899, October 9th, By order filed, the time for filing the record in this case in the United States Circuit Court of Appeals is enlarged to December 31st, 1899.

IN THE

CIRCUIT COURT OF THE UNITED STATES,

FOR THE

WESTERN DISTRICT OF PENNSYLVANIA.

SITTING IN EQUITY.

No. 11, NOVEMBER TERM, 1894.

CHRISTIAN SCHWARTZ, a citizen of the State of West Virginia; Anthony Koterba, David Strohaker and Allen Shale, citizens of the State of Ohio, and G. L. Shale, a citizen of South Dakota. Plaintiffs,

vs.

JOHN S. DUSS, GOTTLIEB REITHMUELLER, FRANZ GILLMAN, Conrad Hermansdoerfer, Edward Killerman, Johanna Hermansdoerfer, Susie C. Duss, Karolina Molt, Katrina Nagel, Elizabeth Beck, Marie Diem, Barbara Boesch, Fredericka Muntz, Dorothea Hoehr, Regina Lautenschlager, and Christina Rall, and Henry Hice and John Reeves, citizens of the State of Pennsylvania and residents of the Western District thereof; and The Union Company, a Corporation created by the laws of the State of Pennsyltrict thereof, Defendants.

To the Honorable, Judges of said Court:

Your orators complain and say:

1st. That during the years 1804 and 1805 one George Rapp and certain followers and associates of his, of the Kingdom of Wurtemburg, emigrated to the United States, and established an unincorporated religious society at Harmony, in the County of

Butler, State of Pennsylvania. That said society was called the "Harmony Society," and was organized upon the principle of community of goods and land ownership. The members of the said society, who had brought with them from Wurtemburg money, combined their funds and held all their property in common, they living as members of a common household, and each member enjoying alike with every other the fruits of their common labor, in equality and brotherhood. The occupation or business of said society was agriculture, except in so far as it was necessary to manufacture shoes, clothing and other necessaries for the community; and this so continued until the year 1807, or thereabouts. The members of said society obeyed said George Rapp as their spiritual and temporal leader and ruler. The only laws or rules governing said society were made by him, the members thereof having no voice in their enactment. All members thereof were upon an equality so far as this world's goods were concerned, and in all things their civil and social life was subservient to their religious life. The religious doctrine taught by said Rapp, and upon which the Society was founded, was that the second advent of Christ and the beginning of the Millennium was near at hand, and that, in order to be prepared for the same, the members of said society must separate themselves from the world and live in the manner hereinbefore stated. About the year 1807 the said community added to their doctrines and practices that of celibacy, as being necessary to the proper preparation of the coming of Christ, and thenceforth and until lately, as hereinafter stated, they lived as if single and unmarried, and abstained from marriage.

2nd. That about the year 1815 said society removed from Butler County, aforesaid, to Posey County, in the State of Indiana, where they remained until the year 1825, when they removed to Beaver County, in the State of Pennsylvania, and settled upon a tract of land purchased by said society at Economy, comprising some 3,000 acres, where they have ever since remained. That said George Rapp ruled over the said society continually from the year 1805 to the year 1847, when he died, and during all said period, from the year 1807 until lately, as hereinafter stated, the beliefs, doctrines and practices stated in the first paragraph were the rules of belief and action of said society.

3rd. Among the original members of said society were Christopher Schwartz, Joseph Koterba, Christina Strahecker, Maria Lorenze and Jacob Scheel (Shale), and John Bamesberger. Christopher Schwartz and Barbara, his wife, came from Germany in 1817, and when the society settled in Beaver County in 1825,

the said Schwartz, wife and six children went to Economy and were admitted to the society. Your orator, Christian Schwartz, was born in Pittsburgh in 1823, went into the society when three years old, and remained therein for a period of twenty years, during which time he labored jealously and faithfully in behalf of said society, when, forming an attachment for Dora Schneider, a niece of Mrs. Kriter, a member of the society, he left the society and was married, and of late years has resided at Charleston, in the State of West Virginia, and is a citizen of the said State of West Virginia. The father of said Christian Schwartz died in Economy on July 5th, 1858, his mother on February 11th, 1857, his sister Fredericka on January 11th, 1857, his sister Maria on May 26th, 1878, his sister Louisa on March 29th, 1889, his brother Joel, who was born in the society, died therein in 1858, and his brother Joseph died at Economy on June 25th, 1889. That the parents of said Christian Schwartz and his brothers and sisters, as aforesaid, remained continuously in said society from the date of their admission until their demise as aforesaid, and that each of said parents, brothers and sisters died intestate, leaving surviving them as their sole heir and legal representative the said Christina Schwartz. That the said decedents in addition to giving unto the said society large sums of money at the time of joining said society, contributed very largely in after years to the growth and prosperity of said society by a life of labor and devotion to its best interests; that your orator, the said Christian Schwartz, only left the society by reason of his contemplated marriage as aforesaid, and because the doctrine of celibacy prevented his remaining in the society after his said marriage. That all the members of his family are buried in the graveyard of said Harmony Society, adjoining the town of Economy. Joseph Koterba, the father of your orator, Antony Koterba, was one of the founders of the Harmony Society, having come from Germany in company with Father Rapp, and assisted in the organization of the society in Butler County in the year 1805. Two years later Andrew Koterba, the half brother of your orator, was born in this society and remained therein twenty-three years, until his death in 1880, dying intestate, and leaving as his heir your orator, the said Anthony Koterba, a citizen of the State of Ohio.

That in the year 1805, the paternal and maternal grandparents and the parents of your orator, David Strohaker, joined the Harmony Society, contributing thereto many thousand dollars. And the grandparents aforesaid remained members until their decease, and died intestate, and that the father of your orator continued a member until his marriage to Mary Rief, a member of said so-

ciety, and the mother of your orator, whose parents likewise were members of said society; that the parents of your orator were compelled to leave the Harmony society in order to contract said marriage, owing to the principle of celibacy then enforced; that Catharine Strohaker, the aunt of your orator, was likewise a member of the Harmony Society and died therein intestate, and that your orator, David Strohaker, is the heir of the parties aforesaid and is now a citizen of the State of Ohio.

That Maria Shale (Scheel), with her two sons, Jacob and Lawrence, came from Germany in the year 1804, and were among the first to join the Harmony Society, the said sons assisting in the building of the three towns of said society, and contributing largely by their labors to the founding and maintenance of said society; that the said last mentioned parties died intestate, leaving as their heirs, your orator, G. L. Shale, the son of Lawrence Shale, and nephew of Jacob as aforesaid, a citizen of the State of South Dakota, and your orator, Allen Shale, the grandson of Lawrence Shale or (Scheel) aforesaid, a citizen of the State of Ohio.

That all of the above named defendants, natural persons, are citizens of the State of Pennsylvania, and residents of the Western District thereof, and the said corporation is a corporation created by the laws of the State of Pennsylvania and a citizen and resident of the Western District thereof. And that the above named defendants, natural persons, except the said Hice and Reeves, were formerly members of the Harmony Society, and are the last members of said Harmony Society, which has become dissolved as hereinafter stated, and are with your orator entitled to the distribution of the remaining assets of said society excepting the said Duss, who never legally became a member of said society.

4th. That after the death of said George Rapp, in the year of 1847, a plan for the regulation and government of said society was adopted by the members thereof, by which the management of the internal affairs thereof was committed to a "Board of Elders," to be composed of nine members of said society, while the external business affairs were to be managed and transacted by a "Board of Trustees," to be composed of two members, who should be selected by said Board of Elders from the members thereof. The first Board of Elders consisted of John Schnabel, Adam Nachtribe, John Eberly, Mathias Scholle, Joseph Hoerhla, Johnathan Lenz, Romulus Baker, Jacob Henrici and J. Stahl. Romulus L. Baker and Jacob Henrici were chosen the first Board of Trustees, and they and their successors have continued the management of the affairs of said society until lately. The present

Board of Elders consists of John S. Duss, Susie C., his wife, Gottlieb Reithmueller, Conrad Hermansdoerfer, Regina Lautenschlager, Frank Gillman, Maria Diem, Fredericka Muntz and Karoline Molt.

5th. At the death of Romulus L. Baker, which occurred in 1868, Jacob Henrici and Johnathan Lenz became the Board of Trustees, and they continued to act as such until the death of said Johnathan Lenz, which occurred in 1890, when Jacob Henrici and Ernest Woelful became the Board of Trustees, and acted as such until the death of said Ernest Woelful, which occurred in the same year. Jacob Henrici and said John S. Duss were then made trustees and acted as such until the death of Jacob Henrici, on the 25th day of December, 1892, when said Samuel Sieber was made a trustee, and on the retirement of whom from the society, at the instance of said Duss, referred to hereafter, Gottlieb Riethmueller, a relative of said Duss, was elected trustee, and the said Duss and Riethmueller are at the present time holding the position of trustees in said society.

6th. That the money and real estate from those who became members of the society by said George Rapp and his successors were received and accepted by them in trust and for the furtherance of the tenets and beliefs upon which the society was founded, and the assets of said society by profits, interest and accretions became of great value.

7th. That at the death of said Lenz and for some time thereafter that said society was solvent, said possessions or trust property amounted in value upwards of $4,000,000. That all of said possessions up to and until the grievances hereafter complained of, were scrupulously used for the benefit of all its members and for the advancement, benefit and continuation of the society.

8th. That the Harmony Society from the period of its inception until a recent date, adhered rigidly to its plan of government and became illustrious and highly respected by reason of its sincere advocacy of the equality of man, its espousal of the highest principles of Christianity, and its honesty and benovelent administration of all public functions, whether in the management of its internal affairs or in its many transactions with the citizens of Western Pennsylvania.

9th. That until the acts hereinafter complained of, the said society, notwithstanding the simplicity of its organization, its abhorrence of purely worldly aims and its consequent lack of business experience, has but once in a period of ninety years suffered from serious internal discord, and that was on the occasion of the visit and later the induction into the society of one Count De

Leon in the year 1831, who, by artifice and by a pre-acquired knowledge of the peculiar religious beliefs of its members, was enabled to represent himself as the Divine Messenger, and that his presence and that of his followers was the fulfillment of the Second Advent, an expectation at the period that was shared by many of the pietistic sects of Germany and Harmony Society in particular. The discord created by this pretended Messiah and his followers in their persistent efforts to obtain control of the society and its wealth, finally led to their retirement, accompanied by one-third of the members of the society, so credulous were these honest and simple-minded Harmonists in the claims of this adventurer. Sixty years have now elapsed and again a plot very similar in general details, and exactly similar in purposes has finally brought the society wholly within the control of a mere adventurer, so that as an organization is has wholly ceased to exist.

10th. That during the year 1890, after a long period of prosperity and complete harmony in said society, began a second conspiracy, as last aforesaid, the results of which have overturned and destroyed the entire government of the society, wasted nearly its entire wealth, depleted its membership to a few aged and infirm women and placed the management of the society and the control of its remaining assets in the hands of one man and certain associates and confederates, within and without the ranks of the society, as hereinafter more fully set forth. That on July 29th, 1889, one John S. Duss, and wife, both formerly employees and servants of the society, arrived at the town of Economy after an absence of some six years precarious life in the West, both of whom were penniless, without visible means of support, and neither in any way related to any member of the Harmony Society, or contributed in any manner to the funds or assets of the society, but on the contrary, the said Duss has been a mendicant or servant according to his absence or presence in the society since his extreme youth.

11th. That the said Duss, shortly after his arrival at Economy, as last aforesaid, sought and obtained employment as school teacher and thereupon began, with the assistance of certain confederates, his efforts to obtain admission into the society. Upon the death of Miss Gertrude Rapp, granddaughter of the founder, and housekeeper of Father Henrici, Senior Trustee, the said Duss, by intrigue, very opportunely had his mother, a former servant of the society, take the place made vacant by the death of Miss Rapp, thereby gaining ascendancy over the will of the aged and decrepit Senior Trustee. One week later George Kirschbaum, a member of the Board of Elders and the confidential friend of

Jonathan Lenz, Junior Trustee, was suddenly killed in a natural gas explosion; a few days later John Wirth, another member of the Board of Elders, died suddenly; two weeks later Jonathan Lenz, a member of the Board of Elders and Junior Trustee, died suddenly, and that thereupon the remaining members of the Board of Elders, now thoroughly demoralized and wholly under the dominion of said Duss, proceeded on January 24th, 1890, to fill the vacancies on said board by secretly choosing as successors to said Kirschbaum, Wirth and Lenz, the said Duss and two confederates, named Jacob Nicklaus and Herman Fischern, none of whom had ever been members of the society and became such, if at all, by their election to the Board of Elders of the Harmony Society; that the said election was wholly contrary to the usages of said society, without the assent of a single member thereof except such as were upon said board, and was objected to by nearly every influential member of the society, who were, however, powerless to prevent this unexpected and flagrant violation of the society's practices; a few days later the new board elected Mrs. Duss a member of the society. Six months later Ernest Woelful, aged about forty years, the successor to Lenz as Junior Trustee, died suddenly and unexpectedly, and the Board of Elders, of which said Duss was a member, elected thereupon said Duss as Junior Trustee, so that within the period of six months, the said Duss became a member of the society, a member of the Board of Elders and Junior Trustee.

Shortly after this the said Duss and wife took up their abode with Jacob Henrici, the senior trustee, and continued to remain therewith until the latter's death, as hereinafter mentioned.

12th. That prior to the coming of said Duss to Economy he was friend and confederate of Dr. Cyrus Teed, the notorious libertine and adventurer, now located in Chicago, and presiding over an institution filled with depraved and deluded women whom he calls his "angels" and to whom he represents himself as the "Messiah." From the entrance of said Duss into the Harmony Society it had been his design to admit the said Teed and his entire collection of notorious men and women, into the Harmony Society, thereby converting this old and religious celibate society into one closely allied with the free-love doctrines of the Oneida and Mormon communities, and at the same time by said admission obtain for himself and said Teed the entire control and management of the Harmony Society and its large possessions. To assist in said purpose the said Duss, after taking up his residence with Father Henrici, secretly sent large sums of money belonging

to the Harmony Society to said Teed, and from time to time clandestinely admitted into the town of Economy certain intimate friends of said Teed, among them one Turner Silverfield and a notorious female passing under the assumed name of Miss Emertz, the latter one of Teed's so-called "angels." Miss Emertz, by arrangement with said Duss, was given the opportunity of addressing the members of the Harmony Society in their church, in which address she heralded the coming of the new Messiah Teed, extolled his disciples, and declared he would soon be in their midst.

After an hour's discourse by this depraved woman, Duss addressed the members, saying that Teed was the true Messiah, and that his doctrines were true. Later the said Duss, by reason of his residing within the house occupied by said Henrici, Senior Trustee, and his predecessors, including the founder of the society, George Rapp, was enabled to appropriate certain valuable and sacred vestments worn at one time by Father Rapp, which were duly sent to said Teed to assist in the success of his pretended divinity. Having the limited government of the society well within his control, and believing the opportune moment had arrived, the said Duss caused to be erected a large and expensive residence on the outskirts of the town of Economy, and had the same expensively and luxuriously furnished and adorned, exceeding in size, style and appointment any building in the community, and the edifice was built, as your orators allege and expect to be able to prove, for the express accommodation of the Kovesh Society, presided over by said Teed. At this juncture many of the active and more intelligent of the Harmony Society broke into open rebellion against the sinister and immoral design of their so-called trustee, and as a result thereof Henry Feucht, one of the most active protestants against this proposed desecration, was arbitrarily expelled from the society by the Board of Elders at Duss' instance, and while reluctantly restored on threats of legal redress and disclosures later attending the litigation aroused by the final withdrawal of the Feucht family from the society, after receiving $70,000 in money and real estate as an inducement to leave, the plot to admit said Teed and his female followers was, for the time being, abandoned, and an entirely new and equally destructive plot was then arranged by said Duss, with the assistance of other confederates not allied with said Teed, and the same has now been almost consummated, as hereinafter more fully set forth.

13th. That the said Duss, at the time he joined the society, in the year 1890, was about thirty years of age, and was by far its youngest member. The society then consisted of two classes

of members, about equal in number, one composed of old and infirm persons, mostly female, who, from the decrepitude of age, their long residence in the society, and a blind faith in the absolute integrity of their former rulers, were ever at the mercy of the Senior Trustee, were he a person actuated by other motives than a father towards his family; the other class made up of comparatively young persons, mostly men, possessing considerable knowledge of the world, and who, like Duss, had joined the Society from time to time, as the needs of the society required the admission of new and more active members to take the place of those who died or were unable in their declining years to assist in the management and the agricultural pursuits of their community.

14th. Upon the failure of the plot to turn the society over to the said Teed, the said Duss concluded to wreck and dismember the Harmony Society, and thereby attain for himself and confederates what he had lost by not colonizing said society as aforesaid. To this end, having the entire control of the Board of Elders, he directed that no new members be elected to the society under any circumstances whatsoever, and as a result thereof the said Duss and Susie C., his wife, are the last members admitted to the society in the last four years. And later the said Duss arranged for the removal of all said members of said society to the end that he, the said Duss and his confederates, might acquire the entire assets of the said society, as will more fully appear hereafter.

15th. That the said Duss, after his election as Senior Trustee, for the purpose of carrying into effect his plan to obtain possession of the society's assets, entered into certain arrangements with one Henry Hice and one John Reeves, of the town of Beaver, Beaver County, Pennsylvania, whereby the said Duss agreed to use the money of the Harmony Society to pay off the alleged indebtedness of the Economy Savings Bank, of which said Hice and Reeves were the principal officers, and for this purpose the said Duss, without the knowledge or consent of the members of said society, used over $1,000,000 of the society's money. That the said bank was then wholly insolvent by reason of the overdrafts made and honored by said Hice and Reeves, officers and stockholders in said bank, and officers and stockholders in the Beaver Falls Cutlery Works and File Works, the debtors of said bank. That the losses incurred by said society by reason of the mismanagement of the said bank, cutlery works and file works by said Hice and said Reeves amounted to over $2,000,000, all of which the said Duss knew at the time of his fraudulent and unauthorized

use of the society's funds as aforesaid, and that since the said unlawful division of said money, the said Duss has not proceeded against either the said Hice or said Reeves to recover back the money then and now lawfully due said society, and by said Hice and Reeves, but on the contrary, has aided and abetted the same in obtaining further assets of said society, as will more fully appear hereafter.

16th. That on the 21st day of December, 1892, the said Duss and certain confederates, conspiring together to defraud your orators and the members of the said society generally and to provide means for the payment of the indebtedness of the said Economy Savings Bank, caused to be executed by the said Duss as trustee, and by his co-trustee, Jacob Henrici, a certain mortgage, bearing the date and year last aforesaid, and recorded in the Register's Office of Allegheny County, in Mortgage Book, vol. 639, page 94, for the sum of $400,000, bearing 6 per cent. interest, upon the lands of the said society in Beaver and Allegheny Counties, including the entire town of Economy, its church, the graveyard of the society, wherein are interred Father Rapp and four hundred deceased members of the society, including the parents or other ancestors and relatives of your orators as aforesaid.

The said mortgage includes the home of the said society, and the residences of the aged and infirm members thereof, and was made without any authority from the said society or your orators, and the execution of the same by the said Henrici was in *articulo mortis*, and wholly beyond any power of comprehension of his act, and the said mortgage was not the act of the said society or of the said Henrici, and was for the purpose of paying off claims upon which the society was only partly liable, if at all, and in relief of said Hice and Reeves, for which they were primarily responsible.

And said mortgage is an apparent lien upon the interest of your orators in the said described lands. And your orators charge it is the purpose of the said Duss, Hice and Reeves and certain other confederates by means of a foreclosure of said mortgage to obtain possession of all such lands and exclude therefrom your orators and other parties holding interest therein as members of said society or heirs of deceased members.

Your orators therefore demand that the said defendants make a full and perfect disclosure as to the date and amount of mortgage, the names of the parties mortgagee, the uses to which the proceeds thereof had been put, and should it appear that large sums have been applied to the payment of the liabilities of said

bank, who were concerned as partners and officers in said bank and what steps, if any, have been taken to compel such persons to pay their shares of said liability. And your orators crave and reserve the right hereafter on the coming in of the answer to add such as defendants to this bill, if they shall be so advised, and also to make the persons named as mortgagees in said mortgages parties defendant hereto, should your orators be advised that they are necessary or proper parties and in order that the validity of said mortgage may be inquired into.

17th. That on the day of June, A. D. 1893, the said Duss, for the purpose of raising another large fund wherewith to secretly secure and induce removal of those members most likely to inquire into the validity or propriety of his conduct as trustee, as more fully set forth in paragraph 18th of the present bill, caused to be executed a second mortgage, bearing the day and year last aforesaid and recorded in the office of the Recorder of Allegheny County in Mortgage Book, vol. 677, page 1, for the sum of $100,000, bearing 6 per cent. interest, upon the lands described in the former mortgage. That said last mentioned mortgage was made without any authority from said society or your orators, and the execution and delivery of the same by said Duss was without the assent of the members of said society, most of whom at the present time are in ignorance of the same. And your orators request that the answer when filed shall state specifically the purpose of said mortgage and to whom the proceeds thereof were paid, again reserving the right to make other parties defendants hereto on the filing of said answer.

18th. Your orators further show, that immediately prior to the assumption of said John S. Duss of the office of trustee, and thereafter until lately, the said society was possessed of valuable dividend-paying stocks in prosperous bridge companies, railroad companies, water companies and other prosperous corporations in the State of Pennsylvania, to the amount of nearly two millions of dollars, and that the said Duss lately sold, assigned and disposed of all, or substantially all of said stocks. And your orators further charge and believe that by means of the sale of such stocks and the lands of the society, the said Duss is attempting to raise funds to carry out his purpose hereinbefore set forth, and to divert the assets of said Harmony Society from the use of your orators and its members, and to appropriate the same to the advantage and enrichment of him, the said Duss, and his confederates. And your orators request a full disclosure as to said sales, the purchasers therein, the amount of consideration and how the proceeds thereof were used or applied.

19th. As the next scheme to wreck the society, the said Duss, by artifice, misrepresentation, coercion and fraud, induced or forced nearly all of the active and more intelligent members of the society to leave and withdraw from said society, as hereinafter more fully set forth, so that the few remaining members by reason of age and other infirmities, are wholly ignorant of their peril and unaware of the fraudulent acts and future plans of said Duss. That the said Duss has secretly and fraudulently appropriated several hundred thousand dollars, realized partly from the sale of stocks upon which the said society was dependent for an income, and partly from a certain fraudulent mortgage placed upon the town of Economy, which said money the said Duss has fraudulently and secretly from time to time used in getting rid of those members of the society most likely to prove dangerous to the consummation of his scheme as aforesaid. That within the past year the said Duss induced Samuel Sieber, the Junior Trustee, to leave the society upon the payment of a large sum of money fraudulently and secretly appropriated as aforesaid, and has elected in his place one Riethmueller, a relative and friend of said Duss; that later the said Duss, without the authority or knowledge of said society, induced Hugo Miller, one of the leading members of the Board of Elders and a most useful member of the society in the management of its internal affairs, to leave the society, paying a sum of money approximating $10,000. In a like manner the said Duss induced Jacob Nicklaus, another member of the Board of Elders to leave the society, paying him also a large sum of money; a few weeks later the said Duss induced Blaszius Platz, another member of the Board of Elders, to leave the society, paying him also a large sum of money; a month later the said Duss induced Moritz J. Fredericks, another leading member of the Board of Elders, to leave the society, paying him likewise a large sum of money. That after the fraudulent and secret removal of said Sieber, Miller, Nicklaus, Platz and Fredericks from the Board of Elders, as aforesaid, the said Duss, without the assent of the members of the society, personally selected as their successors upon said board four women, to-wit: Susie C. Duss, wife of said Duss; Maria Diem, aged eighty years, unable to speak English, infirm and without any business capacity whatever; Fredericka Muntz, aged seventy-five years, unable to speak English, and unable to understand the slightest business affairs; Regina Lautenschlager, aged seventy-four, unable to speak English, ignorant and infirm; Karoline Molt, aged fifty years, unable to speak English, ignorant and without any business experience.

That never before in the history of the society were women eligible to serve on said board, and that the same is now composed of a majority of women, all of whom, with the exception of Susie C., wife of said Duss, are old and infirm and unable to act in the management of said society or to comprehend its situation, so the said board has but a nominal existence and is not permitted by said Duss to take any part in the management of the affairs of the said society and is not consulted by him except possibly his said wife, and the said Duss and his confederates hereinafter mentioned have usurped and now have the entire control and management of the affairs of said society and are now controlling and managing all of the real and personal property of the said society in their own interest, as hereinafter more fully set forth. That in addition to the removal of the members of the council as aforesaid, the said Duss fraudulently and secretly induced, by representation, coercion, and the payment of large sums of money, the following members to leave the society within the past two years: Julius Stickel, Paulie Stickel, Sigmund Stievater, Christina Hoerer, Elizabeth Sieber, Benjamin Feucht, Rebecca Feucht, Henry Feucht, Margaret Feucht and Tirza Feucht, so that the said society, excluding the Board of Elders as aforesaid, is now reduced to a membership of only eight persons, none of whom are aware of the actions of said Duss, or are consulted by him in the present control and management of the property of said society.

20th. That on the 12th day of April, 1894, the said Duss, without any authority from the members of the Harmony Society, and in the utmost disregard to his trust, secretly entered into an arrangement with said Hice, Reeves, and one James Dickson, whereby he, the said Duss, agreed to convey the town of Economy, the surrounding properties and certa ' other lands of the Harmony Society, situate in Allegheny C nty, to the Union Company, an alleged corporation created under the laws of the State of Pennsylvania. And your orators allege that a conveyance has been made by said Duss for the lands as aforesaid, and that the same was made without the knowledge of your orators or any members of the said society, excepting possibly Susie C., wife of said Duss, and Gottlieb Riethmueller. That by the said pretended conveyance and sale of the home of the Harmony Society and its other properties, the said Duss has attempted to wholly terminate the existence of said society, not only as to the government thereof by the Board of Elders and by the members, but also as to the ownership of any property. That the said Union

Company, in addition to said Duss and Riethmueller, is composed of said Hice and Reeves, debtors of the said Harmony Society, as hereinbefore stated, and one James Dickson, the private bookkeeper and confidential agent of said Duss, whose interest in said corporation was acquired by gift from said Duss.

That your orators are advised that it was not competent for the said trustees to convey said properties to the said Union Company, but such transfer was a breach of trust and wholly invalid. Your orators, therefore, demand a full answer and disclosure as to said pretended sale and transfer, to whom the several shares therein have been issued, and on what consideration.

21st. That for the purpose of winding up and dissolving said society, the said Duss being unable to obtain the consent of the remaining members to withdraw from the said society, upon receipt of their shares of the said assets, is now endeavoring to compel said remaining members to depart by means of intimidation and oppression. Having abolished the pursuit of agriculture, and having dispossessed the society of all means of income from outside sources by the fraudulent sale of its interest-bearing securities, and having mortgaged the town of Economy, and later conveyed away the said properties as aforesaid, the said Duss is only prevented from acquiring the apparent title to the vast resources of the said Harmony Society by reason of the membership of half a dozen old, infirm women, as aforesaid. As an instance of such cruel and oppressive conduct as aforesaid, your orators allege, among other things, that on June 28th, 1894, the said Duss caused Elizabeth Beck, aged eighty years, and one of the oldest and most respected members of the society, to be taken out of her residence on false representations, and, against her strong protests, had her incarcerated in an abandoned shed, once occupied as a saddler's shop and later as a chicken coop, where she is still confined, deprived of every comfort essential to a woman of her advanced years, and due her by reason of a life spent in the service of the society. That the said Elizabeth Beck has been deprived of her nurse, and is now in the alleged custody of one Fredericka Muntz, a woman of ungovernable temper and cruel disposition; that the said shed wherein she is confined has but one room, and is utterly unfitted for human habitation, and unless the said Elizabeth Beck be restored to her former home, and placed in the care of a competent and faithful nurse, she will soon die from exhaustion and terror, or become a helpless lunatic. That the said Duss has been guilty of many other such acts of oppression, which your orators reserve the right to offer proof thereon upon the trial of this cause.

22d. That the said Duss has been and now is engaged in the business of selling intoxicating liquors as the property of the Harmony Society, without any license whatsoever, either from the government of the United States or from the courts of the State of Pennsylvania.

23rd. That the principle of equality which has hitherto been regarded as one of the objects of said society is no longer recognized or maintained; that the said John S. Duss and his family enjoy every luxury which they may desire, expending therefor thousands of dollars annually, while the aged and infirm members, who, by a life of frugality and continuous labor acquired this estate, are now obliged to be content with the bare necessities of life, and these awarded to them with grudging and stinting hands.

24th. That the said John S. Duss, in addition to the many breaches of trust and in the maladministration of his duties as aforesaid, is a man of bad moral character, and is as such utterly unfitted to act as the Scriptural advisor and head of a religious society; that the said Duss, in addition to holding so-called religious views utterly at variance with the creed of said society, has been guilty of gravest duplicity with his cousin, Fredericka R. Kroll, a young girl of some eighteen years of age, formerly a member of his household, in secretly taking her to the Teed residence in Chicago, where she is continually surrounded by the depraved and wanton women who compose the majority of Teed's so-called "Angels." On the filing of said answer your orators particularly demand the said Duss to account for the money sent said Cyrus Teed and Fredericka R. Kroll within the past two years.

25th. That recently said Harmony Society has become dissolved as aforesaid, that all of its purposes and practices established as aforesaid by the founder of said society, and by the ancestors of your orators, have been abandoned, that the pursuit of agriculture no longer exists in said society; that its chief assets, consisting of bonds, stocks and other securities, and the town of Economy, with its buildings and the adjacent lands of said society, consisting of some 3,000 acres, and which constituted the basis of organization and business of said society, have been sold and conveyed away by the said Duss as aforesaid in fraud, however, of the rights of your orators and their co-tenants, and that by reason of the facts hereinbefore set forth, your orators and the said last members, except the said Duss and wife, are now tenants in common of all of said lands and tenements, and entitled to partition thereof, in proportion to their respective interests.

26th. That for some time past the members of said Harmony Society have been retiring therefrom and have received the amount of their interest in said association in the land or money, or both, the land being set apart in severalty to them, and have released all of their rights and interests in said association in consideration for such payment or conveyance to them, and that by said retirement and withdrawal the membership of said association has been reduced to the persons hereinbefore named members, that by common consent this association has ceased to exist as an association, and that if the property thereof has ever been impressed with a trust (which your orators deny, as being contrary to public policy and void in law or equity), such trust has wholly ceased and the assets of such dissolved association have reverted to the donors thereof among whom were the ancestors and intestates of your orators as hereinbefore fully set forth.

Your orators therefore need equitable relief as follows:

FIRST. That a receiver may be appointed by your Honorable Court, to take charge of the property and assets, real and personal, which were of this said society, including the land fraudulently conveyed away as aforesaid to the said Union Company, until the final decree in this cause.

SECOND. That now, by a preliminary injunction, and hereafter by a perpetual injunction, under the seal of your Honorable Court, the said Duss may be restrained and enjoined from encumbering, selling, assigning or in any way intermeddling with any of the property and assets which were of said Harmony Society, and from creating any debt, obligation or liability of said society, and from in any way interfering with its affairs.

THIRD. That your Honors will decree that said Duss shall make full discovery of the accounts, liabilities, debts, assets which were of said Harmony Society, and that said Duss may in a like manner account for his management thereof since he became a Trustee of said society.

FOURTH. That the Union Company and the said Duss, Riethmueller, Hice, Reeves and Dickson, its members, agents and officers be restrained and enjoined by preliminary injunction, to be perpetual on final hearing, from in any manner granting, conveying, charging or encumbering the said land or any part thereof, so as aforesaid conveyed by said Duss and Riethmueller.

FIFTH. That the said deed and conveyance made by the said Duss and Riethmueller to the said Union Company be decreed fraudulent and void, and without effect as against your orators, and that the Union Company and its said members, agents and

officers be ordered and decreed to surrender the said deed of conveyance to the Clerk of your Honorable Court for cancellation by him.

SIXTH. That an account may be stated by your Honorable Court against the said Duss of the losses which the said society has sustained through his fraud and mismanagement, and that he be decreed to pay over to the receiver so appointed by your Honorable Court for the use of your orators and the other parties entitled, the balances so ascertained against him.

SEVENTH. That your Honors will order a decree, a marshalling of the assets which were of the Harmony Society and a winding up of its affairs, and a division and distribution of its assets, real and personal, either by means of a sale under order of your Honorable Court, or in such other manner as your Honors may deem most expedient, to and amongst the parties legally and equitably entitled thereto, including your orators, and that your orators may receive their just share and proportion of said assets, real and personal, in severalty.

EIGHTH. That your Honors will grant unto your orators such other and further relief as to your Honors may seem meet, and as the exigencies of the case may require.

NINTH. And may it please your Honors to grant unto your orators a writ subpœna, under the seal of your Honorable Court, commanding the defendants to appear upon a certain day in your Honorable Court and answer the bill of complaint, and an answer under oath is hereby waived, and stand and abide what your Honorable Court shall decree in the premises; and your orators will ever pray, etc.

SHIRAS & DICKEY.
Counsel for Plaintiffs.

Commonwealth of Pennsylvania,
County of Allegheny. } *ss.*

Personally before me, the undersigned authority, came Anthony Koterba, one of the above-named complainants, who, being duly sworn according to law, deposes and says that he has read the foregoing bill of complaint, and that the statements thereof, so far as the same are made of his own knowledge, are true; and so far as the same are made upon information and belief, he believes them to be true.

Sworn and subscribed this 23d day of June, A. D. 1894. } ANTONY KOTERBA.

ROBERT T. MCELROY,
Notary Public.

IN THE

CIRCUIT COURT OF THE UNITED STATES,

FOR THE

WESTERN DISTRICT OF PENNSYLVANIA.

SITTING IN EQUITY.

No. 11, NOVEMBER TERM, 1894.

CHRISTIAN SCHWARTZ, a citizen of the State of West Virginia; Antony Koterba, David Strohaker and Allen Shale, citizens of the State of Ohio, and G. L. Shale, a citizen of South Dakota,

vs.

JOHN S. DUSS, GOTTLIEB RIETHMUELLER, FRANZ GILLMAN, Conrad Hermansdoerfer, Edward Killerman, Johanna Hermansdoerfer, Susie C. Duss, Karoline Molt, Katrina Nagel, Elizabeth Beck, Marie Diem, Barbara Boesch, Fredericka Muntz, Dorothea Hoehr, Regina Lautenschlager, and Christina Rall, and Henry Hice and John Reeves, citizens of the State of Pennsylvania and residents of the Western District thereof; and The Union Company, a Corporation created by the laws of the State of Pennsylvania, and a citizen thereof, and a resident of the Western District thereof.

To the Honorable, the Judges of said Court:

The answer of Gottlieb Riethmueller, Frank Gillman, Conrad Hermansdoerfer, Edward Killerman, Johanna Hermansdoerfer, Susie C. Duss, Carolina Molt, Katrina Nagel, Elizabeth Beck, Maria Diem, Barbara Boesch, Fredericka Muntz, Dorothea Hoehr, Regina Lautenschlager and Christina Rall, defendants to the bill of complainants, respectfully show:

1st. In the year 1803 George Rapp and his son John, and several of their friends, left the Kingdom of Wurtemberg, came to the United States, and located at a place called Harmony, in Butler County, Pennsylvania, where they were joined by a considerable number of other emigrants. They remained there until the year 1814, when they removed to Posey County Indiana, where they remained until the year 1825, when, becoming dissatisfied, they moved back to Pennsylvania, and located at Economy, in Beaver County, Pennsylvania, where they ever since have resided. They formed a society or an association called "The Harmony Society," and in 1805 they made the first written contract be-

tween them. This was followed by other written contracts, dated respectively 1821, 1827, 1836, 1847, 1890 and 1892. All of these contracts are in writing, and were executed by all members of the society at the time they were respectfully dated, except that the agreement of 1892 was not signed by Henry Feucht and Margaret, his wife, and Benjamin Feucht and Rebecca, his wife, who have since withdrawn from the society. True copies of said several agreements and writings, marked "A, B, C, D, E, F and G" respectively, are hereto annexed and made part of this answer.

Community of goods was not a principle of the early colonists, but each one held his own in severalty. In 1805 the doctrine of community of goods was adopted, and it then became, and ever since has remained, the one indispensable thing to membership in the society. No one could belong to the society without adopting the principle of community of goods, and this has ever since been and is the main, striking feature of the Harmony Society.

No particular form of religious belief was ever necessary to membership in the society, and though George Rapp and subsequent spiritual leaders have preached the second advent of Christ, and have also preached the nearness of the millenium, yet a belief in either of these doctrines was not necessary to membership in the society. In the written contract of 1827, the society specially declared that it had been founded by George Rapp and others:

"Upon the basis of Christian fellowship derived from the sacred Scriptures, including the government of the patriarchal age, united to the community of property adopted in the day of the apostles, and wherein the single object sought is to approximate, so far as human imperfections may allow, to the fulfillment of the will of God by the exercise of those affections and the practice of those virtues which are essential to the happiness of man in time and throughout eternity."

From 1805, at Harmony, in Butler County, Pennsylvania, in Indiana, and at Economy, in Beaver County, the Harmony Society, through its agents or trustees, has carried on mercantile pursuits and manufacturing business of different kinds, as well as agricultural pursuits.

In 1807, different members of the society advocated the efficacy of celibacy, and since then this doctrine has been followed and practiced by a great number, if not all, of the members of the Harmony Society.

It is true that the members of the Harmony Society have, since 1805, always had all things in common, and that each received from the society that which was necessary to his or her maintenance, and support, and education, and each in turn was

bound to render unto the society obedience and labor. There was, and always has been, equality between the members of the society, save the necessary difference resulting from the election to the governing bodies in the society itself; and each of the members of the society agreed to submit himself to the government provided by the society for its and their control.

Except herein expressly admitted, the averments of the first paragraph are denied.

2nd. We admit that in 1815 the Harmony Society moved from Butler County, Pa., to Posey County, Indiana, and in 1825, removed from Posey County to Economy, in Beaver County, where is has ever since remained.

George Rapp, in the different positions he occupied, ruled over the society from 1805 until 1847, but during that time other members also occupied positions of trust and power in the society.

All the other allegations in the second paragraph of the bill are denied.

3rd. It does not appear by the records of this society that Maria Lorenz, Christian Schwartz, one of the plaintiffs, Dora Schneider, Mrs. Kriter, Joel Schwartz, Mary Rief, Maria Shale (Scheel) and her son, Lawrence Shale, ever became members of said Harmony Society, nor did the ancestors of said Christian Schwartz, or of the other plaintiffs contribute cash or other property of any consequence to the common property of said society. We deny that the said Harmony Society has become dissolved; that said plaintiffs are in any way entitled to intermeddle with, or participate in any wise in the enjoyment or in the division and distribution of the property of the said society by reason of heirship or in any other manner whatsoever. And defendants aver that John S. Duss was legally elected a member of said society.

4th. The averment in the 4th paragraph of the bills are admitted. The plan for regulation and government of the Harmony Society, which is therein referred to, was a written contract duly executed in 1847, marked Exhibit "E," by all the then members of the Harmony Society.

5th. The averments of the 15th paragraph of the bill are admitted with the explanation that John S. Duss was elected as a trustee on July 28th, 1890, and Samuel Sieber was elected as a trustee on the 27th day of December, 1892, and who voluntarily withdrew from said society on the day of July 6th, 1893; and on the 6th of July, 1893, Gottlieb Riethmueller was elected as trustee in his stead, and not at the instance and request of John S. Duss, as alleged.

6th. The averments of the 6th paragraph of the bill are de-

nied as therein stated. It is, however, admitted that the agents and trustees of the Harmony Society, in whose names, from time to time, all the goods and properties of the society have been placed or held, were then, and ever since have been and are now, held in trust for the Harmony Society, but always subject to the terms of the written contracts between the members of the said society. Among these terms it was expressly provided that each member of the society did release all his right, title, interest and claim in law and equity to any and all the property of the society in whatsoever name it might be held. No one member of the society could or can, in any way under these written contracts claim any portion of the common fund or property, but all the members expressly covenanted with each other that the said common funds and property of the society should be and remain joint and indivisible stock.

7th. That at the death of Johnathan Lenz, we believe it to be doubtful whether said society was solvent or not, and deny that the possessions or trust property thereof amounted to four million ($4,000,000) dollars; and we aver that all the possessions of said society were and have been to this present time held for the use or the benefit of all its members, and for the advancement, continuation and the best interests of the society.

8th. The averments in the 8th paragraph of said bill are admitted to be correct, with the exception, that up to this present time it has never departed or deviated from its original plan of government, except as changed or modified in the several agreements hereinbefore referred to.

9th. We admit that about 1832, a number of the members of the Harmony Society severed their connection with said society, and with one Count De Leon settled at Phillipsburg, Beaver County, Pennsylvania, and except as herein expressly admitted, the averments of the 9th paragraph are denied.

10th. After considerable correspondence with, and at the special instance and request of Messrs. Henrici and Lenz, the trustees of the society at that time, John S. Duss and wife, who were residing on a farm or ranch in Nebraska, sold their property there and came to Economy in July, 1888, he, Duss, being employed by the trustees as a teacher in the school of the society. All other averments of said paragraph, not here expressly admitted, are denied.

11th. We admit that after the death of Miss Gertrude Rapp, who had been acting as housekeeper for Jacob Henrici, the Senior Trustee, Mrs. Duss, the mother of John S. Duss, who had been a member of the society for a number of years, at the instance and

solicitation of the trustees, with the full knowledge thereof by the Board of Elders and the members of the society, was elected as housekeeper to fill the vacancy occasioned by the death of Miss Rapp.

That after the death of George Kirschbaum, John Wirth and Johnathan Lenz, on or about January 24th, 1890, John S. Duss, Jacob Nicklaus, and Herman Fischern, then members of said society, were duly and legally elected members of the Board of Elders, to fill the vacancies occasioned by the death of the aforesaid Kirschbaum, Wirth and Lenz. That Mrs. Susie C. Duss, with eighteen others, was elected a member of the society about three weeks thereafter; and that after the death of Ernest Woelfel, the Junior Trustee, John S. Duss was duly and legally elected trustee to fill the vacancy occasioned by the death of said Woelfel; and some time after the election of Mr. Duss as trustee, at the request of Mr. Henrici and in accordance with a resolution by the Board of Elders, he and his wife took up their residence in the same house with Jacob Henrici, the Senior Trustee, and have continued there ever since.

All other averments of said 11th paragraph, not here expressly admitted, are denied.

12th. The averments of the 12th paragraph of said bill are denied as therein stated.

13th. The averments of the 13th paragraph of said bill are denied, except that Mr. Duss at the time he joined the society was about thirty years of age.

14th. The averments of the 14th paragraph of said bill are denied.

15th. We believe that large sums of money have been lost by the conduct and investments of certain of the trustees who were elected prior to the election of John S. Duss, and this included investments in a glass works at Beaver Falls; in the Economy Savings Institution; in the Beaver Falls Cutlery Works and File Works; in the P. C. and Y. Railroad Company, and in conducting the agricultural pursuits of the society. We are not able to give accurately the amount of such losses. We believe that John S. Duss has honestly, faithfully and conscientiously applied the assets of the society toward the liquidation of the large indebtedness thereof. All the allegations in the 15th paragraph of the bill not hereby expressly admitted are denied.

16th. The averments of the 16th paragraph of the bill are denied, except that it is admitted that the trustees, Henrici and Duss, did on the 21st day of December, 1892, execute and deliver to Harry Darlington, trustee, a mortgage to secure the payment

of the sum of four hundred thousand ($400,000) dollars borrowed from him by Henrici and Duss, trustee, for the purpose of paying the debts of the Harmony Society, and this mortgage is upon substantially all the land of the society situate in Harmony Township, Beaver County, Pennsylvania, and Leet Township, Allegheny County, Pennsylvania; it bears interest at six (6) per cent. per annum, and the principal is payable in five (5) years after date, with the privilege of paying any part of said debt, not less than twenty-five thousand ($25,000) dollars at one time after three (3) years from date. We have no knowledge of the specific debts to which the proceeds of said mortgages were applied, but the same will be shown in the answer to be filed by Mr. Duss.

17th. The averments of the 17th paragraph are denied, except that it is admitted that the trustees, John S. Duss and Samuel Sieber, did, on May 31st, 1893, execute and deliver to Harry Darlington, trustee, a mortgage to secure the sum of one hundred thousand ($100,000) dollars borrowed from him by said Duss and Sieber, trustees, for the purpose of paying on the debts of the Harmony Society; this mortgage is upon substantially the same property as described in the mortgage referred to in the preceding paragraph; it bears interest at six (6) per cent. per annum, and the principle is payable in or within three (3) years from date, and the indebtedness to which the proceeds thereof have been applied to be shown in the answer to be filed by Mr. Duss.

18th. The averments of the 18th paragraph of the bill are denied, except that it is admitted that the Harmony Society did own stock in a number of bridge companies, railroad companies, and other corporations in the State of Pennsylvania, but the amount thereof we cannot state; that a considerable portion thereof has been sold by the trustees and the proceeds thereof applied to the payment of the debts of the society. The amount of stocks so held and sold, the proceeds thereof, and upon what account paid, will be fully and specially set forth by Mr. Duss in his answer to said bill.

19th. The averments of the 19th paragraph of said bill are denied, except, that it is admitted that never before in the history of the society were women elected members of the Board of Elders of said society, for the reason that there were always sufficient men to serve in such capacity, and not because of the ineligibility or disqualification of the female members of said society acting in such capacity, there being nothing in the organic laws of the society designating which sex shall or shall not be eligible to serve as elders, trustees, or in any other capacity of said society that may be required. There are now eighteen (18) members in said

society, two of whom, Lena Wolfangel and Philipina Wolfangel, have not been made parties defendant in said bill.

20th. The averments in the 20th paragraph of said bill are denied, except, that the real estate of the society situate in Beaver County and Allegheny County, Pennsylvania, was conveyed by the trustees of the said society to the Union Company, a corporation legally created under the laws of the State of Pennsylvania, with the knowledge and consent of the members of the society and of the Board of Elders thereof. The capital stock of said corporation being four hundred thousand ($400,000) dollars, of which three hundred and ninety-five thousand ($395,00) dollars is held by the trustees of said society, the balance thereof by Conrad Hermansdoerfer, a member of said society, and Henry Hice and James Dickson.

21st. The averments of the 21st paragraph of said bill are denied.

22nd. The averments of the 22nd paragraph of said bill are denied.

23rd. The averments of the 23rd paragraph of said bill are denied.

24th. The averments of the 24th paragraph of said bill are denied.

25th. The averments of the 25th paragraph of said bill are denied.

26th. We admit that the membership has been reduced by death and voluntary withdrawals from time to time since the organization of the society. All other averments of said 26th paragraph of said bill not expressly admitted are denied.

27th. For further answer to the bill the respondents say:

When John S. Duss was, in 1890, appointed a trustee, the actual financial condition of the society was known to no one except Jacob Henrici, and it is doubtful if it was really understood by him. We believe that Mr. Duss began an investigation which it was difficult to either start or carry on, and gradually he arrived at an approximate idea of the real condition of the society, which he found to be sustantially this:

The society owed directly on negotiable promissory notes	$ 317,350.00
The society owed directly on open account	41,000.00
The society owed, due on demand	1,081,000.00
Debt of the Harmony Society	$1,439,350.00

To meet this it had a large amount of stocks (most of which were pledged for the payment of debts), besides real estate and

other property. The most of the debt was presently due or rapidly maturing. Nearly a million of dollars of it was for deposits in the Economy Savings Institution, in which the Harmony Society had the eight-tenths interest, and any run on that bank would have been most disastrous to the financial future of the society.

Mr. Duss, with great care, sold off at good prices many of the stocks and portions of the real estate and borrowed money on mortgage, and with the moneys thus realized paid off the said pressing debts.

The society, to meet the remaining debts, has still ample property, and your respondents believe and aver that they will be able to dispose of sufficient of the property to pay all the debts and yet have left sufficient to support the society. In this investigation Mr. Duss also discovered that the society had lost large sums of money in investments in different industrial enterprises, all of which investments were made prior to the election of Mr. Duss, and for none of those losses is he or his co-trustee, Reithmueller, responsible. The management by the present trustees has been marked with faithfulness and ability, and the result to the society has been most beneficial.

28th. Under the written agreements or contracts hereinbefore referred to, for the government of the Harmony Society, your respondents are advised and believe and charge, that the plaintiffs have no interest, legal or equitable, in the assets or property of the Harmony Society, either by or on account of previous membership in said society, or as the heirs or representatives of others who were at one time members thereof, nor in any other way or manner whatsoever.

Wherefore, having fully answered the averments of the bill, your respondents pray to be hence dismissed, with their reasonable costs in this behalf most wrongfully sustained.

GOTTLIEB RIETHMUELLER,
CONRAD HERMANSDOERFER,
FRANZ GILLMAN,
FREDERICKA MUNTZ,
REGINA LAUTENSCHLAGER,
CHRISTINA RALL,
LENA WOLFANGEL,
PHILIPINA L. WOLFANGEL,
KATRINA NAGEL,
KAROLINE MOLT,
JOHANNA HERMANSDOERFER,
SUSIE C. DUSS,
JOHN S. DUSS.

Her
DOROTHEA X HOEHR,
Mark.
MARIA DIEM,
Her
ELIZABETH X BECK,
Mark.
His
EDWARD X KELLERMAN,
Mark.
BARBARA BOESCH,

Beaver County, ss.

Personally before me came, Gottlieb Riethmueller, Conrad Hermansdoerfer, Franz Gillman, Fredericka Muntz, Regina Lautenschlager, Christina Rall, Lena Wolfangel, Philipina L. Wolfangel, Katrina Nagel, Karoline Molt, Johanna Hermansdoerfer, Susie C. Duss, John S. Duss, Dorothea Hoehr, Maria Diem, Elizabeth Beck, Edward Kellerman and Barbara Boesch, being persons named as Defendants in the Bill of Equity in this case, who, being duly affirmed say, that the allegations contained in the foregoing answer, in so far as stated on their own knowledge, are true, and in so far as stated on information received, they believe them to be true.

Affirmed to and subscribed this Seventeenth day of July, A. D. 1894. HENRY BREITENSTEIN,
Justice of the Peace.

GOTTLIEB RIETHMUELLER,
CONRAD HERMANSDOERFER,
FRANZ GILLMAN,
FREDERICKA MUNTZ,
REGINA LAUTENSCHLAGER,
CHRISTINA RALL,
LENA WOLFANGEL,
PHILIPINA L. WOLFANGEL,
KATRINA NAGEL,
KAROLINE MOLT,
JOHANNA HERMANSDOERFER,
SUSIE C. DUSS,
JOHN S. DUSS,
Her
DOROTHEA X HOEHR,
Mark.
MARIA DIEM,

Her
ELIZABETH X BECK,
Mark.
His
EDWARD X KELLERMAN,
Mark.
BARBARA BOESCH,

IN THE
CIRCUIT COURT OF THE UNITED STATES,
FOR THE
WESTERN DISTRICT OF PENNSYLVANIA.

SITTING IN EQUITY.

No. 11, NOVEMBER TERM, 1894.

CHRISTIAN SCHWARTZ, a citizen of the State of West Virginia; Antony Koterba, David Strohaker and Allen Shale, citizens of the State of Ohio, and G. L. Shale, a citizen of South Dakota,

vs.

JOHN S. DUSS, GOTTLIEB RIETHMUELLER, FRANZ GILLMAN, Conrad Hermansdoerfer, Edward Killerman, Johanna Hermansdoerfer, Susie C. Duss, Karoline Molt, Katrina Nagel, Elizabeth Beck, Marie Diem, Barbara Boesch, Fredericka Muntz, Dorothea Hoehr, Regina Lautenschlager, and Christina Rall, and Henry Hice and John Reeves, citizens of the State of Pennsylvania and residents of the Western District thereof; and The Union Company, a Corporation created by the laws of the State of Pennsylvania, and a citizen thereof, and a resident of the Western District thereof.

To the Honorable, the Judges of the said Court:

The answer of John S. Duss, one of the defendants to the bill of complainants, respectfully shows:

1st. The defendant begs leave to refer to the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th and 9th paragraphs of the answer filed in this case by the other members of the Harmony Society, also defendants in this case, which he approves and adopts as his answer to the first nine paragraphs of the plaintiff's bill of complaint without repeating the same herein at length.

10th. The allegations of the tenth paragraph of the bill are denied. My father, then serving in the Federal Army; my mother, in March, 1862, with me, a child then of two years of age, went to Economy, where she was employed by the Trustees of the Harmony Society as a nurse; my father having died of a wound received at the Battle of Gettysburg, my mother remained in the service of the society continuously (with the exception of two months) until the year 1876.

From the year 1873 to 1876 I attended the Soldiers' Orphans' School at Phillipsburg (now Monaca). Leaving there I returned to my mother at Economy and entered the service of the Harmony Society. After a few months' absence in Germany, in 1876, my mother and I returned to Economy, and in the fall of 1878 I was given a position in the service of the Harmony Society as teacher of the German department of the public school, and remained there until August, 1879, when I left to attend Mount Union College, in the State of Ohio. I left Mount Union in 1882, and went to Kansas as a teacher in the Kansas State Reform School at Topeka, Kansas. In 1883 I purchased a farm in Webster County, Nebraska, of one hundred and sixty acres, paying therefor the sum of $1,280.00, and removed thereto and engaged in the business of farming and cattle raising until the year 1888, when, at the earnest solicitation of Mr. Henrici, I sold all my personal property upon my farm in Nebraska and returned to Economy to take charge of the public school conducted by the Harmony Society.

11th. It is not true that shortly after my arrival at Economy I sought and obtained employment as a school teacher; on the contrary, my coming to Economy was, as hereinbefore set forth, at the earnest solicitation of Mr. Henrici, and for the express purpose of becoming the teacher of the public school conducted by the Harmony Society, and I made no efforts whatsoever to obtain admission into the society.

On the 27th of December, A. D. 1889, Miss Gertrude Rapp, granddaughter of the founder of the society, who had charge of the so-called "Great House," or the residence of Mr. Henrici, died. After the funeral, Trustees Henrici and Lenz chose my mother, who had several years before become a member of the society, to fill the place made vacant by the death of Miss Rapp. This choice was not at my suggestion or instance. I was not consulted with reference to it, and had nothing whatsoever to do with the selection, and the selection was made against my mother's wishes, and she requested Mr. Henrici to excuse her from the duty. A short time afterwards Mr. Henrici again asked her to serve in the place to which she was appointed, which she agreed to do, as she was bound as a member of

the society to obey the order of the trustee. Neither my mother nor any one else ever gained ascendency over the will of Mr. Henrici, on the contrary, Mr. Henrici was of an inflexible and autocratic will, self-sufficient and wholly beyond the influence of any one.

In the fall of 1889, while engaged in teaching school at Economy, Mr. Lenz, then one of the trustees, came to me and suggested that Herman Fischern, a former teacher in the school, and myself, should join the society. Mr. Henrici told me if we would join the society (i. e., Fischern and myself) it would be very acceptable to them. At these suggestions of Lenz and Henrici, the two trustees, I did join the society in January, 1890, and my wife, who was a great friend of Miss Rapp, and who, in the meantime, had been influenced by her, had also so decided.

It is true that on January 2nd, 1890, George Kirschbaum, a member of the Board of Elders, was suddenly killed, and a few days later, John Wirth, another member of the Board of Elders, died of paralysis, and on January 22nd, 1890, Johnathan Lenz, the Junior Trustee, and a member of the Board of Elders, died of hemorrhage of the brain.

Under the constitution of the society, the Board of Elders has the exclusive power to admit new members and to fill the vacancies on the Board, and to elect all officers, and always has had and exercised such power. January 24th, 1890, the Board held a meeting at which they elected me a member of the society, and also a member of the Board of Elders, and, also, at the same time, elected Jacob Nicklaus and Herman Fischern members of the society and also of the Board of Elders.

I did not seek or suggest the election of myself to be a member in the Board of Elders, neither did I have any information of the intention of the Board to elect me until after the meeting at which it was done was over. The said election was in precise accordance with the constitution and usages of the said society, and was by the unanimous consent of the Board of Elders, and was not objected to by any member of the society. Three weeks afterwards, Mrs. Duss, with seventeen others, amongst whom were Henry Feucht and wife, Benjamin Feucht and wife, and Julius Stickel and family, were elected members of the society by the Board of Elders.

It is true that Ernest Woelfel, who in January, 1890, had been elected Junior Trustee in place of Mr. Lenz, deceased, died about July 26th, 1890, of hemorrhage of the brain, and thereupon the Board of Elders, without any suggestion, elected me Junior Trustee in the place of said Woelfel, deceased. The said election was in accordance with the constitution, practice and usages of the said society.

My mother, who, at Mr .Henrici's request, had charge as hereinbefore stated, of the "Great House," died in April, 1891, and the Board of Elders, not at my instance or suggestion, decided that myself and wife should take up our abode in the "Great House," where Mr. Henrici lived; this was done at the instance of Mr. Henrici and in accordance with a resolution of the Board of Elders, and to do this necessitated the separation of myself and wife from our children, a girl and boy, aged respectively, eight and five years.

The truth in respect to the subject matter of the allegations of the eleventh paragraph of the bill is precisely as herein detailed, and otherwise than as herein specifically stated all of the allegations of the said paragraph are denied.

12th. Previous to my going to Economy I never heard of Dr. Cyrus Teed, and did not know there was any such man in existence, or any such community over which he is alleged to preside. The first time that I heard of Dr. Teed was upon a visit of Mrs. Emertz to the town of Economy, some time in the year 1880. Mrs. Emertz, or anyone else, was not admitted into the town of Economy by me or anyone else, either clandestinely or otherwise; she came upon a visit to the town the same as any other person who might so desire would have the right to do. The cause of her visit, as explained by herself, was the fact that she had seen in a newspaper an account of a sermon preached by Mr. Lenz at Economy in respect to the Battle of Armaoeddon, supposed to be referred to in the Book of Revelations; and, as the doctrines of the sermon, as reported in the newspaper, touched upon similar doctrines entertained by the society of which the said Mrs. Emertz is a member, it excited her interest. At this, her first visit, she remained about a week, conversing with Henrici and other members of the Harmony Society, investigating the beliefs of the individual members, and the only connection I had with her was in the fact that she visited the school upon one occasion that I was then teaching. She visited the town of Economy again in the summer of 1891, but not at my instance or request. She said that she had been east and was going west, and that she merely intended to stop off from one train to another, spending a few hours at Economy; but at Mr. Henrici's request, and not mine, she prolonged her visit, and while she was there she was informed that some of her beliefs were misrepresented by members of the community, and Mr. Henrici urged her, for the correction of such misrepresentations, to make a public explanation of her beliefs in the church, which she accordingly did. But in this, the only public address that she made in the town, she said nothing in respect to Teed being the second Messiah, or that he would soon be in their midst. At the close of her ad-

dress I rebuked some of the younger members of the congregation for disorderly conduct during the meeting, and said nothing about Teed or about the doctrines announced by Mrs. Emertz, or about any Messiah; and the allegations of the bill in respect thereto are absolutely false.

It is not true that certain valuable and sacred vestments worn at one time by Father Rapp were sent to Dr. Teed by me, or to any one else. The truth being that the vestments referred to are and have always been highly prized by the Harmony Society, and safely kept in the trustees' residence, where they remain and always have remained until this day; and the allegations in this behalf made in the bill are utterly without foundation whatsoever.

It is not true that I caused to be erected a large and expensive residence on the outskirts of the town of Economy; the truth being that I was the only member of the Board of Elders who refused assent to the erection of the building referred to, and I did, individually, exert all the influence I had to prevent its erection, and am not responsible for its building or for its furnishment. The erection of the said building was made in pursuance of the command and the desire of Mr. Henrici and Elder Fischern, the latter being the superintendent of the saw mill, near to which the house referred to was built; this house was built as a boarding house to accomodate the laborers employed in the mill. So far as I know the erection of this building had no reference whatsoever to any plans or projects of the Koreshan Society, or otherwise than herein expressly stated.

It is true that Henry Feucht was expelled from the society by the Board of Elders on April 25th, 1892. The expulsion of the said Feucht was proposed by John Scheid, the oldest male member of the Harmony Society (excepting only Mr. Henrici) because he had habitually violated his vow of obedience to the government of the society, and was continually lying about and defaming the character of the members, the Board of Elders and the trustees, and by false tale-bearing attempting to stir up strife between the members of the society, and causing to be published in the public press false and malicious misrepresentations as to the condition of the society and its government.

It is true that, after his expulsion, he threatened litigation, but upon my advice and inducement he was restored July 28th, 1892, to membership by the Board of Elders, because the financial condition of the society at that time was such that I believed it would be disastrous to have such condition publicly known, which I thought would probably result from the threatened litigation.

13th. I was nearly thirty years of age when I joined the society

in the month of January, 1890, and was, at that time its youngest male member, although three younger members joined three weeks after I did; the balance of the thirteen paragraphs describing the condition of the society is purely fictitious and without any foundation of fact whatsoever.

14th. Since my election as trustee there never was any plot to turn the society over to Dr. Teed, or any other person, and so there was no failure of any such plot as alleged in the bill. I never, at any time formed or imagined any scheme to wreck or dismember the Harmony Society; but I have, at all times, as particularly shown hereinafter, labored most diligently for its preservation. I never exercised, at any time, any undue control of the Board of Elders, and I never, at any time, directed that no new members should be elected; the allegations in this respect in the bill are utterly false.

It is also untrue that Mrs. Duss was the last member elected into the society, which occurred in February 1890. At the time that she was elected there were seventeen other persons elected members of the Harmony Society, together with her; and since the said election there were elected three other members in February, 1892. I have never at any time arranged for the removal of the members of the society; but, on the contrary, have at all times labored to preserve its membership as far as it was possible for me so to do, and, with the exception of the Feucht and Stickel families and Leonhard Haerer, I have strenuously urged all withdrawing members to remain in the society.

15th. Henry Hice and John Reeves were partners of the Harmony Society in the conduct of a banking business by means of the institution known as the Economy Savings Institution, at Beaver Falls. The capital of said bank was $450,000.00, of which the said Hice and Reeves each owned 1-10, and the Harmony Society 8-10. Judge Hice was president of the bank and Mr. Reeves was the cashier, but in the conducting of the business of the said bank they were subject to the management and direction of Mr. Henrici.

The Beaver Falls Cutlery Works was a manufacturing concern located at Beaver Falls, of which the Harmony Society owned an 8-10 interest, Judge Hice, 1-10 and John Reeves, 1-10.

The Western File Works was a manufacturing corporation operating a plant for the manufacturing of files, in which the Harmony Society owned ..... shares of stock.

The cutlery works were managed under the direction of Mr. Henrici, and he also for some time managed the Western File Works. About December, 1891, I discovered that the Economy

Savings Institution was insolvent, owing about $1,100,000 to depositors and other banks over and above its live assets. For this indebtedness the Harmony Society, as a partner, was liable for the full amount, and the whole of the indebtedness was practically subject to call. When I discovered the condition of the said institution, I immediately set about preparing to meet the liability of the society, not waiting to discuss with Messrs. Hice and Reeves their liability, because they were both unable to meet such an enormous indebtedness, and were both men whom I believed would be perfectly willing to pay their proportion of the same so far as they might be able, the true policy at that time, as I believed, being to save the institution from closing its doors, which would have been utterly disastrous, not only to the Harmony Society but to the depositors of said bank, as well as the entire community. The accounts between the partners have not yet been settled, but I propose to have such settlement and collect from the other partners, Messrs. Hice and Reeves, their proportion of indebtedness due to the Harmony Society, so far as they may be able to pay it. The origin, as well as the connection, of the Harmony Society, with the aforementioned industrial enterprises and institutions, as well as others of a like nature, is explained as follows: The lands of the Harmony Society, at and in the vicinity of Beaver Falls and Economy, comprised about 3,000 acres. It had been for years the policy of Mr. Henrici to develop the value of the lands at Beaver Falls, by promoting in every way he could the growth of the town, and to such end he for years past from time to time induced the location of manufacturing industries of various kinds, notably, the above-mentioned cutlery works and the file works in said town, as well also other business institutions, such as the above-mentioned bank; and as such industries became unprofitable, he had, for a long time, undertaken to sustain them by loans of large sums of money and by investing largely in them, and in the case of the cutlery works by finally purchasing it, in order to maintain it as a going concern, regardless of whether it lost or made money. By such means he thought to add largely to the value of the society's lands in the neighborhood, and as well to carry out his charitable designs in giving employment to large numbers of men; and, finally, by this course of conduct, as well as by giving away large sums of money for charitable purposes, and an annual loss of about $100,000.00 in conducting agricultural operations and maintaining a large number of laborers at the town of Economy, succeeded by the year 1891 in accumulating an indebtedness for the society of over $1,500,000.00. Every dollar of the assets of the society used by me for the purpose of meeting this indebtedness has been

honestly applied to its payment, and not one cent thereof has been diverted for my own use or any other use than that of the Harmony Society.

16th. It is true that, on the 21st day of December, 1892, Mr. Henrici and myself, as trustees of the Harmony Society, for the purpose of paying the indebtedness of the said society, borrowed from Harry Darlington, trustee, the sum of $400,000, and to secure the payment thereof made and executed a mortgage upon the principal part of the society's lands lying in the Counties of Allegheny and Beaver. The said mortgage was immediately recorded in the office of recorder of deeds in the County of Allegheny and in the County of Beaver.

It is not true that the said mortgage was made without any authority from the society; but, on the contrary, though not required so to do under the articles of government established by the Harmony Society, yet I did, personally, before the execution of the said mortgage, explain to the entire society, the greater portion of whom had assembled in the council room on my call (a few being sick), the intention of the Trustees to make such mortgage and the necessities therefor; and, after such explanation, each member of the society, excepting only Henry Feucht and his wife and Benjamin Feucht and his wife, consented and agreed to the making and the execution of the said mortgage. The said money was borrowed, as hereinbefore stated, for the paying of an indebtedness, for which the said society was liable for the whole amount thereof. As is hereinafter shown, the society has now an abundance of assets to meet the said mortgage indebtedness, and there is no purpose, intention or danger of the said mortgage being foreclosed, and but for the borrowing of the said money the said society would have been hopelessly insolvent, and all its assets sacrificed for the partial payment of its debts. About the time of the making of the said mortgage the insolvency of the society was accepted as a fact by friend and foe, and such condition was well known to certain men who had sustained long personal relations with Mr. Henrici, and who so long as Mr. Henrici lived did not desire to disturb or embarrass him, but in anticipation of his death, formed, or attempted to form syndicates of capitalists for the express purpose of taking advantage of the society's insolvency and procuring its valuable assets at prices far below their real value so soon as Mr. Henrici should depart this life. Their expectations, however, in this behalf have been defeated by my efforts in securing the said loans and the management of the other assets of the society for the liquidation of its indebtedness. The bitterness resulting from

the frustration of their plans I believe accounts in a large measure for the scandalous character of the bill filed herein.

17th. It is admitted that on the 31st day of May, 1893, the said defendant, with Samuel Sieber as his co-trustee (Mr. Henrici then being dead, said Samuel Sieber being the successor of Mr. Henrici), did negotiate a second loan from Harry Darlington, trustee, for the sum of $100,000, and to secure the payment thereof executed a mortgage of said date upon the lands of the society described in the said $400,000 mortgage; no specific appropriation was made of this money, but the same was deposited in bank and used as other moneys of the society in the prosecution of the business of the said society and in the liquidation of its indebtedness. The said last-mentioned mortgage was made upon the authority hereinbefore mentioned.

It is denied that most of the members of the society up to the present time are in ignorance of the negotiation of the said mortgage, as the trustees communicated with the Board of Elders and other members of the society at the time the transaction took place. The said loan was not made for the purpose of inducing the withdrawal of any member of this society, and had no relation whatsoever thereto, but was made because the needs of the society absolutely required the use of the money for the payment of its indebtedness and in the prosecution of its business. Ten thousand dollars of the principal of the said mortgage has been paid.

18th. The society was formerly possessed of certain stocks and bonds in bridge companies, railroad companies, water companies and other corporations, but the same, instead of being of the value of $2,000,000, as alleged in the bill, did not exceed in value $500,000 at the time of my election as trustee; some of the said stocks and bonds, but not all or substantially all, have been sold by the trustees from time to time, as the necessities of the society required for the payment of its debts, as will be more fully explained hereinafter. No bonds or stocks or any other assets of the society have been sold for any other purpose, and the sale of those that have been sold has been made absolutely necessary by the pressing financial necessities of the society.

I have in connection with my co-trustee, between April 1st, 1892, and June 30th, 1894, sold for and applied to the purpose abovementioned the following stocks of the par value and for the price mentioned:

Stocks, etc.	*Par Value.*	*Sales.*
Bank of Pittsburgh	$ 9,650 00	$ 19,300 00
Allegheny National Bank	3,500 00	4,690 00
M. & M. National Bank	8,900 00	13,327 75

Stocks, etc.	*Par Value.*	*Sales.*
Rochester National Bank	5,000 00	6,140 00
P., Ft. W. & C. R. W. Co.	2,700 00	4,412 12
Monongahela Water Co.	129,250 00	152,773 83
Beaver Falls Bridge Co.	27,000 00	27,000 00
Beaver Falls Gas Co.	41,700 00	25,020 00
The Tidioute Bridge Co.	19,300 00	6,433 33
Birmingham & Tenth St. Bridge Co.	2,500 00	7,062 50
Union Drawn Steel Company	50,000 00	75,000 00
	$299,500 00	$341,159 53
Also the following bonds:		
Chartiers Block Coal Company	3,000 00	3,018 00
Point Bridge Company	13,000 00	13,426 53
L. S. & M. S. R. R. Company	102,000 00	102,000 00
P., C. & Y. R. R. Company	282,000 00	249,294 20
	$400,000 00	$367,738 73

19th. The allegations of the nineteenth paragraph of the bill are denied. I have not at any time induced any member of the society to withdraw from its membership. I have not willingly allowed the withdrawal of any member, excepting only Henry Feucht and wife, Benjamin Feucht and wife, Tirza Feucht, the Stickel family and Leonard Haerer. Every other member of the society who has left during my trusteeship has left against my advice and solicitation to remain.

It is true that Samuel Sieber, Hugo Miller, Jacob Nicklaus, Blazsius Platz and Moritz J. Frederichs have withdrawn from the society, and each of them did so against my advice and all the reasonable persuasion that I could use to induce them to remain. At the time of their withdrawal, in accordance with the provisions of the articles of government of the society, wherein it is provided that the trustees shall have and exercise the right to make donations to seceding members as they may deem prudent, we did donate and pay Hugo Miller $5,000, Samuel Sieber $1,000, Jacob Nicklaus $5,000, Blazsius Platz $5,000 and Moritz J. Frederichs $5,000. I have not secretly and frauduently appropriated several hundred thousand dollars, nor any other sum, and the allegations to such effect in the bill I believe to be malicious and false, without any information upon which to make such allegation, and without any belief in its truth by any of the plaintiffs. It is true that by reason of the demise and withdrawal of several of the male members of the society, there were not a sufficient number of men remaining to

make up the full number of the Board of Elders required by the articles of government, and when this condition came about I consulted with competent counsel as to the advisability of keeping the Board of Elders up to the number established by the articles of government, as well as to the eligibility of female members for service upon the said Board; and acting under the advice of said counsel I submitted the question to the society itself at the council room at a meeting held June 7th, 1893, when the majority of the members were present, and the society decided to fill the vacancies then existing in the Board of Elders in accordance with the advice of counsel. While the Board of Elders, under the articles of government had the power and the right to fill all vacancies on the Board, yet at the meeting referred to I suggested to the members that each member of the society, for himself or herself, should write upon a slip of paper the names of three members of the society whom they desired should fill the vacancies upon the Board of Elders, and their wishes in this respect so expressed would be taken as a suggestion by the Board of Elders in the filling of the vacancies. In response to the wishes of the society so ascertained and expressed, the Board of Elders elected Regina Lautenschlager, Fredericka Muntz and Susie C. Duss members of the Board.

On June 26th, 1893, there being a vacancy in the Board of Elders, Maria Diem was elected a member of the said Board. On July 6th Samuel Sieber, having resigned his trusteeship, the vacancy in the Board of Elders was filled by the election of Karoline Molt.

It is not true that never before in the history of the society were women eligible to such position; but, on the contrary, women have always been eligible to membership in the Board of Elders, under the articles of government adopted from time to time by the society. The women mentioned as elected upon the Board of Elders were from the most intelligent members of the society, or that the society ever possessed; and with the exception of Mary Diem, have been faithful in their attendance at the regular weekly meetings of the Board, and have taken an active part in the management of the internal concerns of the society, and fully understand all matters submitted to the Board, and intelligently and competently exercise their judgment and decision in the matters submitted to the Board. During my administration all matters within the jurisdiction of the Board, as established by the articles of government, were and are submitted to the said Board for its consideration. I have neither the entire control or management of the society, nor do I exercise any rights, powers or authority other than those conferred upon me as trustee and as a member of the Board of Elders under the constitution, and only then in so far as I deem it my absolute duty.

It is not true that I fraudulently or by secret and fraudulent representations, induced and coerced, and by the payment of large sums of money to the parties named in paragraph nineteenth, persuaded them to leave the society. I consented to the withdrawal of Julius Stickel, his wife, Pauline Stickel, and Bertha Georatsch, her daughter, because the said Julius Stickel had taken an active part in the promotion of the litigation instituted by the Feuchts, which aimed at the very existence of the society, seeking to destroy it; and the Board of Elders and other members of the society requested their withdrawal. I was opposed to the withdrawal of Sigmund Stiefvater and Christina Haerer and Elizabeth Sieber, and tried to induce them to remain. Benjamin Feucht, Henry Feucht and wife and Tirza Feucht withdrew from the society after they had been defeated in the objects of a certain litigation which they had brought against the society by Shiras & Dickey, their solicitors, and now solicitors for the present plaintiffs; and after they had, under the advice of their counsel, dismissed their suits against the society, I did (at the request of Shiras & Dickey, and in exercise of the rights of the trustees to make donations to withdrawing members), as trustee, pay to their attorneys $28,000 cash for the five members of the Feucht family, and $150 in lumber, and conveyed to them a seven-acre tract of land in Stowe Township, worth about $15,000. When the trustees made these payments to the attorneys for the Feucht family we had no idea or conception that such payments were fraudulent or secretly made, as now alleged in the bill, as the counsel for the Feucht family were reputable members of the bar, and I supposed that they would not take part in inducing or advising me to make a payment that was in any sense fraudulent or in violation of my right as a trustee to make; and I now aver, in defense of their act in receiving and of my act in making the said donations, that the said payments were not fraudulently or secretly made, but were made upon the advice of counsel and in the exercise of the powers conferred upon the trustees under the articles of government of the said society.

The Feucht family, and especially Henry Feucht, had kept the society in a continual turmoil, and Henry Feucht was the chief instigator of all internal dissensions and strife, and at the most critical period in the financial condition of the society had brought the suit referred to for the avowed purpose of accomplishing the destruction of the society, and thus defeating the work I was then engaged in of restoring the confidence of the creditors of the Harmony Society and the liquidation of its debts.

I made the payments above-mentioned for the purpose and under the belief that the internal peace and harmony of the society would

be restored thereby; and litigation clouding the title of the society to its assets, and so exciting the fears of the financial institutions with which we had to deal would be avoided. Shortly after I had made these payments, to-wit, on May 27th, 1893, I was informed of the preparation of the present bill through the counsel for plaintiffs, who were formerly counsel for the Feucht family. I then realized that the belief I had entertained was mistaken, and that the purposes for which said payments were made had in part failed.

All payments made to withdrawing members were reported to and discussed by the Board of Elders.

The membership of the society now consists of eighteen persons, one having died since the filing of the bill herein. The trustees consult with the Board of Elders in all matters pertaining to the management of the internal affairs of the concern, and in all important matters the trustees consult with the entire membership of the society, and they are kept fully advised of all transactions of any moment relating to the affairs of the society.

20th. I did not, secretly or otherwise, at any time, enter into any arrangement whatsoever with Hice, Reeves and Dickson or any other person, to convey the town of Economy and other lands of the society to the Union Company, as related in the bill. It is true that my co-trustee and myself have made a deed conveying the real estate of the society situate in Harmony township and Beaver Falls, both in the County of Beaver, and also lands in Leet township, Allegheny County, and a thirty-four acre tract adjoining the borough of Sewickley.

The trustees made such conveyance, not only in the exercise of full power in this behalf given to them by the constitution of the society, but only after consultation with and approval of the Board of Elders and of each individual member of the society; each individual member of the said society previous to such conveyance having signed a written article, wherein each agreed and consented to the conveyance of the property for the reasons and purposes expressed in said paper, and I hereto attach a true copy of the said writing, signed by every member of the said society, and pray that the same be taken as a part of this answer, which is marked Exhibit "H," and I so show to your Honors that the allegation in said bill that such conveyance was made without any authority from the members of the society is utterly without any foundation of fact, and is only one of many such reckless or malicious statements made in the said bill without information upon which to make the same.

The Union Company, the grantee in the said deed, is a corporation of the State of Pennsylvania, created for the purpose of the

purchase and sale of real estate, or for holding, leasing and selling real estate. Its capital stock is $500,000, the whole of which is owned by and held for the Harmony Society; —— shares, amounting to $397,500 of the said capital standing in the name of the trustees of the said society; ten shares in the name of John S. Duss; ten in the name of Henry Hice; ten in the name of Gottlieb Riethmueller; ten in the name of Conrad Hermansdoerfer, and ten in the name of James Dickson. The shares so held by Duss, Reithmueller, Hermansdoerfer, Hice and Dickson are held in trust for the society, and were issued to them for the purpose of qualifying them to act as directors of the corporation. No part of the capital stock of the said Union Company was issued to or stood in the name of John Reeves, and said Reeves has no interest therein whatsoever.

The conveyance to the said Union Company was made upon the advice of competent counsel, and for the following reasons: The indebtedness of the society made it absolutely necessary for the payment of the same to convert a portion of its lands, from time to time as the same might be sold, into cash for the payment of the said indebtedness. So long as the title to the land stood in the name of the trustees of the Harmony Society, upon the sale of each lot it was necessary that the title of the trustees thereto should be examined by the counsel for each individual purchaser; thus perhaps leading to an investigation by as many separate counsel as there were purchasers, and great inconvenience and annoyance would be the inevitable result of so many separate investigations, as well as great delay and expense, for the reason that each investigation would require time, and the history and the constitution of the society not being familiar to the parties purchasing, or perhaps to their several counsel. To avoid this and to make the lands readily marketable, counsel advised the transfer of the title from the trustees to the said Union Company constituted as aforesaid, in the belief that if the title made by the trustees to the Union Company were once examined and certified to by eminent counsel, or determined by the Courts of the State after judicial inquiry, a great deal of delay, expense and inconvenience attending so many separate investigations as above referred to would be avoided, and conveyances thereof could be readily made. The said conveyance has not destroyed the ownership or interest of the Harmony Society therein, for the reason that it is owner of the entire capital stock of the said Union Company, and so the real beneficial ownership of said lands still remains with the society.

I deny that such transfer was beyond the powers of the trustees or was a breach of trust, but on the contrary I show unto your

Honors that the said conveyance was made in pursuance of explicit power in that behalf conferred upon the trustees by the constitution of the society, and solely for the promotion of its best interests and not otherwise.

21st. Each and all of the allegations of the twenty-first paragraph of the bill are utterly and absolutely false. I have never for a moment conceived or had any purpose of winding up and dissolving the said society, or any desire to have the remaining members thereof withdraw; but on the contrary I have exerted myself in every way possible to save the society from bankruptcy, and to preserve its membership as far as it was possible for me to do so. Franz Gillman and Edward Kellermann, who had become unnecessarily agitated at the time settlement was made with the parties hereinbefore mentioned, were absolutely refused settlement by me repeatedly, and finally subsided and are now peaceful and happy. The trustees have not abolished the pursuit of agriculture; the truth being that in this present season they will raise more wheat than has been raised for many years on the lands of the society—more than an average crop of hay and an average crop of oats. The only thing that has been reduced in the agricultural operations of the society is the number of employees engaged, the trustees now farming to almost the same extent as in years gone by, with less than one-third the labor then employed. The agricultural operations and the maintaining of the town of Economy as carried on by the former trustees, were so carried on at an annual loss to the society, as near as can be estimated, of over $100,000; while, by the operations now being carried on by the present trustees, the maintenance of the society will cost only about $10,000 for the year 1894. The trustees still prosecute the farming of the society's lands according to the wishes of the members of the society.

Elizabeth Beck, mentioned in the said paragraph, was an old member of the society, and previous to June 8th, 1894, had resided in her own house in the village, with a family placed there for the purpose of taking care of her. On account of her old age she at times became so weak and childish that it was thought best by the Board of Elders, upon the suggestion of Fredericka Muntz, one of the oldest members of the society and one of the members of the Board of Elders, and Trustee Riethmueller, and not upon any suggestion of my own, that she should be put under the personal care of Fredericka Muntz. For such purpose Fredericka Muntz fitted up a room in a house thirty feet from her house, making it more comfortable and pleasant than the room then occupied by the said Elizabeth Beck. Having so specially prepared the said room, Fredericka Muntz persuaded her to remove thereto, where she would

be constantly under the care and nursing of a sister of the said Fredericka Muntz and a servant. Her room so occupied was one of the most comfortable in the village, and every kindness, attention and care was bestowed upon her. She died on July 28th, 1894, and her last days were more comfortable and pleasant and spent among more of the comforts of life than perhaps many that she lived in the village, and far more comfortable than those of many of the other inhabitants of the village heretofore.

22nd. The allegations of the twenty-second paragraph of the bill are denied.

23rd. The allegations of the twenty-third paragraph of the bill are denied. The fact is that my method of living is as plain and frugal as that of the majority of the other members of the society, and the other members of the society have now more of the comforts of life and more social freedom than they have at any time hitherto had or enjoyed.

24th. I am not a man of bad moral character, and I believe, from assurances given, that I possess the confidence and trust of all men with whom I have had business relations and who have had opportunity to see and know my disposition and conduct in any of the relations that I have borne to the community. I hold no religious views at variance with the creed of the society. I do not clearly understand the insinuation attempted to be conveyed by the ambiguous language used with reference to the young woman mentioned in the said paragraph, but I aver that my relations with the person named have always been honorable, and the insinuation made is an infamous and cruel libel upon a virtuous and innocent girl, who is not a party to this suit or in any wise concerned herein, and who has no method of defense in this cause. I have sent no money to Dr. Cyrus Teed or any other person mentioned in the said paragraph, as charged in said bill.

25th. The averments of the 25th paragraph of the bill are denied.

26th. The allegations of the 26th paragraph of the bill are denied as therein stated. Some of the members of the society, including those heretofore mentioned, have, as throughout the entire history of the society, from time to time retired, as hereinbefore stated, and to those members retiring under my trusteeship, the trustees, in the exercise of their right under the constitution of the society, have paid the several sums hereinbefore mentioned as donations upon their departure.

27th. Under the written agreements or contracts hereinbefore referred to for the government of the Harmony Society, and

under repeated decisions of courts of the highest authority in the interpretation thereof, this respondent is advised and believes and so avers that the plaintiffs have no interest, legal or equitable, in the assets or property of the Harmony Society, or in the management thereof, by or on account of previous membership in the said society; or as heirs or representatives of others, who were at one time members thereof; or in any other way or manner whatsoever.

28th. All allegations of the bill not specifically and expressly in this answer admitted to be true, I deny, and aver that the same are false.

29th. After I was appointed trustee in the summer of 1890, realizing that my co-trustee, Mr. Henrici, then eighty-seven years of age, in the course of nature would in a short while pass away, and knowing that no records or books of account were kept by the society showing its assets or liabilities, and that all such information rested in the knowledge and memory of Mr. Henrici only, I began an investigation for the purpose of ascertaining during Mr. Henrici's lifetime, as near as possible, the condition of the society. Mr. Henrici was very reticent and resented inquiry. This reticence was due to the misrepresentations made to Mr. Henrici by Henry Feucht. Such documents as the society did possess were not filed away in any one place, but were poked away in all kinds of places—some in the safe or other places at the store, some in the vault at the "Big House," some in Mr. Henrici's desk, bureau drawers, chests, and in fact, throughout various wardrobes, trunks and boxes from garret to cellar throughout the house; some at places in Pittsburgh, some at Tidioute, and at various other places where the society owned property. Owing to this chaotic condition of the papers belonging to the society, and to the fact that no books of account were kept and Mr. Henrici's reticence, I found it almost impossible to start or prosecute inquiry with any hope of success. It required the exercise of the greatest tact, as well as most diligent labor to make any headway in the investigation at all. By December, 1891, I had ascertained sufficient in respect to the financial condition of the society to know that its reputed great wealth was a myth, and such wealth as it did possess in its then condition was more than equalled by its enormous load of indebtedness. After gathering up such shreds of knowledge as I was able to become possessed of and the various papers and documents of the society, I became convinced that, to ascertain anything accurately as to the financial condition of the society, it would be necessary to employ a skilled accountant. The cashier of the Farmers' De-

posit National Bank of Pittsburgh, which bank was one of the creditors of the society, recommended to me for such person Mr. James Dickson, a well-known expert accountant of the City of Pittsburgh. Accordingly I employed Mr. Dickson April 1st, 1892, and put him in possession of such information and papers as I had been able to find.

Mr. Dickson's work revealed the condition of the society to be substantially as follows, as of April 1st, 1892:

The society then owed, practically on demand, over $1,500,000 of indebtedness, including accrued interest. This indebtedness was evidenced by negotiable promissory notes to the amount of $317,350; by open accounts to the amount of $41,000; and sums due on demand to the amount of $1,081,000; making a total indebtedness for which the society was immediately liable of $1,439,350, which, with the accrued interest thereon, aggregated the above mentioned sum. Over $360,000 of this indebtedness was then held by certain banks in Pittsburgh and in New York. The debts due to the banks in Pittsburgh had been secured by collateral, being various stocks and bonds owned by the society, among which were the second mortgage bonds of the P., C. & Y. R. R. Company, which formed a large part of the collateral.

In the fall of 1891, of the collateral held by the banks to secure the then owing indebtedness, which was then more than the amount above mentioned, there were about $137,000 quick assets that might be converted readily into cash, and about $160,000 not marketable.

At that time the Pittsburgh banks became dissatisfied with the collateral and insisted upon additional security, so that we were compelled to prepare a second mortgage on our brickyard and Leetsdale property for such additional security. The necessity for this, however, was obviated by effecting a sale of the majority interest in the capital stock of the P., C. & Y. R. R. Co. held by the society to the Pennsylvania Company, one of the terms of which was that said company should furnish a sufficient guaranty of the second mortgage bonds of the said railroad held by us. This transaction was effected only after months of laborious and careful negotiation. It made our second mortgage bonds good to the extent of $240,000 and enabled us to realize about $94,000 on our holdings in the capital stock of the company.

This transaction, completed about January, 1892, enabled us to pay some of our most pressing debts, particularly an indebtedness of about $163,000 due the State Treasurer, $150,000 of which was on account of State funds held on deposit in the Economy Savings Institution, and also to quiet the fears of the Pittsburgh

banks and induce them to carry the society's notes then held by them for the time being. The only quick assets the society owned in the fall of 1891, previous to this transaction, outside of those pledged to the banks, amounted to about $76,000, and a large part of these were not immediately available, because they consisted of stocks in various corporations, the certificates for which, formerly issued to the society, were mislaid or lost.

A short time after the Pittsburgh banks began to call upon us for more collateral, about November, 1891, and not sooner, I discovered that the Economy Savings Institution, an ordinary partnership in which the Harmony Society owned an eight-tenth interest, was indebted to the amount of $1,100,000, about $1,000,000 of which indebtedness was due to about 3,500 depositors in the said institution, and practically subject to call; to meet this indebtedness the bank had an average daily cash balance of only a few thousand dollars, fluctuating say between $2,000 and $20,000. The situation was, in short, this: The society, owing subject to call over $1,500,000, had in the fall of 1891 about $40,000 available quick assets unpledged. While the society owned assets that in time by wise management could be made available, as I did make them available, as hereinafter related, yet the situation confronting me was precisely as above stated.

From the fall of 1891 and throughout the year 1892 various rumors were put in circulation as to the solvency of the Economy Savings Institution. Some of these rumors were started by Henry Feucht, a member of the society. We had at all times the greatest difficulty in allaying the fears of the depositors and preventing a run on the bank throughout a period of eighteen months, and we were only enabled to keep its door open at all by from time to time, as opportunity offered, selling a lot or other property here and there and putting the proceeds in the bank.

When I discovered the condition of the society I became perfectly satisfied that, if it was to be saved from utter ruin it was absolutely necessary to negotiate a large loan with which to meet the more dangerous debts, particularly the debts due to the depositors in the Economy Savings Institution. To set about to obtain such loan was a matter of grave importance and difficulty, as the search for the needed relief had to be conducted with the greatest secrecy to prevent our condition becoming generally known; and the party to whom we should apply must needs be a man of business qualifications, with legal knowledge to understand our peculiar affairs, and access to the necessary financial resources.

After casting about for nearly a year, each day of which

threatened ruin, to find some such person from whom I could reasonably expect to borrow money sufficient to meet our indebtedness, I determined, in the fall of 1892, to state fully the circumstances to Mr. J. T. Brooks, the general counsel and second vice-president of the Pennsylvania Company, and one of the executors and trustees under the will of the late J. M. McCullough. Through him, for the purpose of meeting the great danger that then threatened us, and for no other purpose, I effected a loan from Harry Darlington, trustee as hereinbefore narrated, in the sum of $400,000, securing the same by the mortgage heretofore mentioned. With the money so borrowed, and with other money realized from the sale of other assets of the society from time to time as I could make favorable sales, I was enabled to release the hypothecated assets of the society, making them available for sale, and thereby largely reduce the pressing debts of the society, and to a great extent averted the immediate danger of insolvency. To effect these transactions required the most diligent and unceasing effort, and at the same time I was embarrassed greatly in all financial operations I undertook by the malicious misrepresentations made by persons without and within the society and false and meddlesome statements continually appearing in the public press, tending and intended to excite the fears of our creditors and financial institutions with which we had dealings, as well as causing me great difficulty and annoyance within the society itself.

The total results since I took active charge are that I have, by prudent disposition of its assets, paid off of the entire indebtedness of the society up to July 1st, 1894, the sum of $1,545,627.67. Of the amount so paid, the sum of $1,142,125.17 has been paid in discharge of the debts due to some 3,500 depositors in the Economy Savings Institution, hundreds of whom have thereby been saved from absolute ruin in the loss of all their savings.

The society now owes, as of July 1st, 1894, besides its mortgage indebtedness of $490,000, the sum of $74,093.89, to meet which indebtedness it has personal assets abundantly sufficient to fully liquidate the same, and real estate available for sale sufficient to meet the mortgage indebtedness at the time it matures, and, under prudent management and ordinarily favorable financial conditions, will have sufficient left to maintain the society and care for its membership. These results have been accomplished under the most trying circumstances, arising from internal dissensions in the society, created and fostered by some of the members who have since withdrawn, as well as by enemies without the society, greatly embarassing me in almost every attempt I made; heaping contumely and personal abuse upon me, both

in private and public; instituting vexatious litigations, clouding the title of the society to all its assets, and creating suspicion on the part of the public and financial institutions against my management, and this too throughout a season of the severest financial distress that this country has ever known.

I have performed all the labor required to accomplish these results simply in the discharge of my trust, and without one cent of compensation other than my bare maintenance as a member of the society; and, in this uncompensated service, I have given up the best years of my life and have denied myself and family most of the comforts and conveniences ordinarily pertaining to civilized conditions of life. For not one dollar of this enormous indebtedness that I was compelled to meet, both before and after the death of Mr. Henrici, am I responsible. I had no part in the contracting of the same. The only responsibility I had in connection with it was the responsibility I assumed in attempting its payment; not a single dollar of the society's money has been diverted by me to my own use, or to any other than the use of the society.

Since the employment of Mr. Dickson, careful and accurate accounts have been kept of the transactions of the society, and I challenge the fullest investigation of the same; the more fully the same may be investigated, the clearer will it appear that I have discharged fully and honestly my trust.

And so, having fully answered the plaintiff's bill, I pray to be hence dismissed, with my reasonable costs in this behalf most wrongfully sustained.

J. S. DUSS.

WATSON & MCCLEAVE,
C. S. FETTERMAN,
Solicitors for Defendants.

ALLEGHENY COUNTY, *ss.*

Personally before me, the undersigned, a Notary Public duly commissioned in and for the county aforesaid, came John S. Duss, who, being by me duly affirmed according to law, did depose and say that the facts set forth in the foregoing answer, so far as they be within his own knowledge, are true, and so far as stated upon information he verily believes them to be true.

JOHN S. DUSS.

Affirmed and subscribed before me this 3rd day of August, 1894.

[SEAL.] L. H. MATTHEWS,
Notary Public.

IN THE

CIRCUIT COURT OF THE UNITED STATES,

FOR THE

WESTERN DISTRICT OF PENNSYLVANIA.

SITTING IN EQUITY.

No. 11, NOVEMBER TERM, 1894.

CHRISTIAN SCHWARTZ *et al.*

vs.

JOHN S. DUSS, GOTTLIEB RIETHMUELLER, HENRY HICE, *et al.*

To the Honorable, the Judges of the said Court:

The answer of Henry Hice, one of the defendants above-named to the bill of complainants, respectfully shows:

Said defendant having carefully read and considered the general answer of the members of the Harmony Society and the individual answer of John S. Duss, and believing the same to be a full and complete answer to the plaintiff's bill of complaint, fully concurs in all that said Duss and the other members of the Harmony Society therein say concerning this defendant's connection in any way whatever, with the Harmony Society and the several manufacturing industries and corporations therein specified, and adopt said answers so far as the same in anywise refers to him directly or indirectly in connection with the said Harmony Society, the several manufacturing industries, and the corporation known as the Union Company, as his answer to said bill of complaint without herein repeating the same at length.

WHEREFORE, Your respondent prays to be hence dismissed, with his reasonable costs in this behalf most wrongfully sustained.

HENRY HICE.

STATE OF PENNSYLVANIA, }
COUNTY OF BEAVER, } *ss.*

Personally appeared before me the above-named defendant, Henry Hice, who being duly sworn, says that the facts set forth

in the forgoing answer are true to the best of his knowledge and belief.

HENRY HICE.

Sworn and subscribed before me this 4th day of August, 1894.

[SEAL] JAMES F. MERRIMAN,
Notary Public.

IN THE
CIRCUIT COURT OF THE UNITED STATES,
FOR THE
WESTERN DISTRICT OF PENNSYLVANIA.

SITTING IN EQUITY.

No. 11, NOVEMBER TERM, 1894.

CHRISTIAN SCHWARTZ *et al.*
vs.
JOHN S. DUSS, GOTTLIEB RIETHMUELLER, JOHN REEVES *et al.*

To the Honorable, the Judges of the said Court:

The answer of John Reeves, one of the defendants above-named to the bill of complainants, respectfully shows:

Said defendant having carefully read and considered the general answer of the members of the Harmony Society and the individual answer of John S. Duss, and believing the same to be a full and complete answer to the plaintiffs' bill of complaint, fully concurs in all that said Duss and the other members of the Harmony Society therein say concerning this defendant's connection in any way whatever with the Harmony Society and the several manufacturing industries and corporations therein specified, and adopt said answers so far as the same in anywise refers to him, directly or indirectly, in connection with the said Harmony Society, the several manufacturing industries and the corporation known as the Union Company, as his answer to said bill of complaint without herein repeating the same at length.

Wherefore, Your respondent prays to be hence dismissed, with his reasonable costs in this behalf most wrongfully sustained.

JOHN REEVES.

STATE OF PENNSYLVANIA, }
COUNTY OF BEAVER, } *ss.*

Personally appeared before me the above-named defendant, John Reeves, who being duly sworn, says that the facts set forth in the foregoing answer are true to the best of his knowledge and belief.

JOHN REEVES.

Sworn and subscribed before me this 4th day of August, 1894.

[SEAL] JOHN N. DUNN,
Notary Public.

IN THE
CIRCUIT COURT OF THE UNITED STATES,
FOR THE
WESTERN DISTRICT OF PENNSYLVANIA.

SITTING IN EQUITY.

No. 11, NOVEMBER TERM, 1894.

CHRISTIAN SCHWARTZ *et al.*
vs.
JOHN S. DUSS, GOTTLIEB RIETHMUELLER, THE UNION COMPANY *et al.*

To the Honorable, the Judges of the said Court:

The answer of the Union Company, one of the defendants above-named to the bill of complainants, respectfully shows:

John S. Duss, one of the defendants above-named, and president of the Union Company, above-named defendant, having in his individual answer to be filed herewith fully set forth the objects and purposes for which the said Union Company was organized, respectfully refers to and adopts the several paragraphs of said answer relating to the organization and purposes of said Union Company as the answer of said company, without repeating the same herein at length.

Wherefore, Your respondents prays to be hence dismissed, with its reasonable costs in this behalf most wrongfully sustained.

JOHN S. DUSS.

STATE OF PENNSYLVANIA, } ss.
COUNTY OF ALLEGHENY. }

Personally appeared before me John S. Duss, president of the Union Company, defendant above-named, who, being duly affirmed, says that the facts set forth in the foregoing answer are true to the best of his knowledge and belief.

JOHN S. DUSS.

Affirmed and subscribed before me this 4th day of August, 1894.

[SEAL] JOHN N. DUNN,
Notary Public.

IN THE
CIRCUIT COURT OF THE UNITED STATES,
FOR THE
WESTERN DISTRICT OF PENNSYLVANIA.

SITTING IN EQUITY.

No. 11, NOVEMBER TERM, 1894.

CHRISTIAN SCHWARTZ, a citizen of the State of West Virginia; Antony Koterba, David Strohaker and Allen Shale, citizens of the State of Ohio, and G. L. Shale, a citizen of South Dakota, Plaintiffs,

vs.

JOHN S. DUSS, GOTTLIEB RIETHMUELLER, FRANZ GILLMAN, Conrad Hermansdoerfer, Edward Killerman, Johanna Hermansdoerfer, Susie C. Duss, Karoline Molt, Katrina Nagel, Elizabeth Beck, Marie Diem, Barbara Boesch, Fredericka Muntz, Dorothea Hoehr, Regina Lautenschlager, and Christina Rall, and Henry Hice and John Reeves, citizens of the State of Pennsylvania and residents of the Western District thereof; and The Union Company, a Corporation created by the laws of the State of Pennsylvania, and a citizen thereof, and a resident of the Western District thereof, Defendants.

REPORT OF MASTER.

To the Honorable the Judges of the Circuit Court of the United States for the Western District of Pennsylvania:

The undersigned, having been appointed by your Honorable

Court, upon agreement and request of the parties, examiner and master in the above stated case, with authority to hear and take all the testimony and to find all the issues of law and facts and to report the testimony and such findings to the Court—as appears by the certificate hereto annexed—respectfully reports:

That in pursuance of notice to the parties, plaintiff and defendant, through their respective counsel, and upon adjournments made from time to time with consent of counsel, he heard and took the testimony which is herewith reported and returned to your Honorable Court.

The bill in this case is filed by the plaintiffs, claiming to be heirs of persons formerly members of a society known as the "Harmony Society"—and who continued to be members thereof until their withdrawal or death—against all of those composing said society at the time of filing the bill, together with Henry Hice, John Reeves and the Union Company, a corporation, who are alleged to be co-conspirators with John S. Duss, one of the members of the society, in an attempt to wreck the society and obtain possession of its property, alleging that all the purposes for which the society was founded have been abandoned, and that by common consent the society had ceased to exist as an association and been dissolved, and that its assets had reverted to the donors thereof, among whom were the ancestors of the plaintiffs, and praying for the appointment of a receiver and a division and distribution of the assets of the society amongst those legally entitled thereto, including the plaintiffs. The defendants, in their answers, deny these allegations of the plaintiffs, and also deny that the plaintiffs have any right to any of the property of the society or to intermeddle with its affairs.

In the agreement of the parties for the appointment of the master in this case are the following provisions, viz.: "That to said Thomson shall be given, as examiner and master, the authority to hear and take all the testimony, and to find all the issues of law and facts, and to report the testimony and such findings to the Court, and if the report of such master shall suggest a decree that the plaintiffs or any of them are entitled to an account against the defendants or any of them, and the same be confirmed by the court, then the case shall be referred again to the master, to state such an account and report thereon to the court."

And "It is distinctly understood that in the conduct of the cause, the master will be governed by the decision of Judge Acheson on certificate of examiner. Opinion filed October 15th, 1894."

The decision, referred to, is of questions certified to the Court

by H. B. Gamble, Commissioner, at the request of counsel, as set forth in pages one to eight of the testimony herewith returned, viz.: 1st. As to the right of the plaintiffs to have John S. Duss, one of the defendants, sworn and examined by the plaintiffs, as if on cross-examination; and 2nd. As to the objection of the defendants that the plaintiffs must first establish their proprietary rights in the assets of the society and their right to an interlocutory decree for an account before investigating any other matters alleged in the bill.

The opinion of the Court, referred to in the agreement, and deciding these questions, is as follows, viz.:

"1. Whether or not the witness, John S. Duss, is to be regarded 'as if under cross-examination,' or as called generally, by the plaintiffs, it is not necessary now to decide. The effect to be given to his testimony will be determined hereafter. As he is manifestly adverse to the parties who have put him upon the stand, they may interrogate him as a hostile witness."

"2. Under the pleadings it would, strictly speaking, be more regular for the plaintiffs in the first instance to show their proprietary interest in the estate and assets which are the subject matter of the bill, and their right to an accounting or to other relief based on ownership. But this Court will not prescribe the rigid observance of that order of proof. Some discretionary latitude should be accorded the plaintiffs' counsel as to the order in which the evidence shall be produced. They are, therefore, at liberty at this time to examine the witness as to the alleged dissolution of the Harmony Society, either by the common consent of its members, or by the abandonment of the purposes for which it was founded; and also to show by him the plaintiffs' proprietary interest and right to an accounting prayed for.

"But with the alleged breaches of trust by Duss as trustee of the Harmony Society or with his alleged personal misconduct the plaintiffs have no concern, unless they really have a proprietary title. It would, therefore, be premature and might be a sheer waste of time to take testimony in relation to those matters until the plaintiffs have made out a *prima facie* case of ownership. When they shall have produced evidence tending to show their right to an account they will be permitted to examine Duss without restriction. In the meantime his examination should be confined within the limits above indicated."

Under this appointment there are but two principal questions at present submitted to the master, viz.:

First. Have the plaintiffs, or any of them, such a proprietary

right or interest in the property and assets of the Harmony Society as entitled them upon the dissolution of the society to any part of or share in such property or assets or as entitles them to the account prayed for in the bill?

Second. Has the Harmony Society been dissolved by the common consent of the members or by an abandonment of the purposes for which it was formed?

As these questions raise entirely separate and distinct issues, both of law and fact, the determination of which requires the consideration of different lines of evidence and questions of law, the masters believes that it will be more satisfactory and convenient to consider each question entirely separate from the other, and will, therefore, so state his findings of fact and law.

On the first question, viz.: as to the rights and interest of the plaintiffs, the master finds the facts as follows, viz.:

In 1803 or 1804 one George Rapp and others came from the Kingdom of Wurtemberg to the United States, and with other immigrants settled at Harmony, in Butler County, Pennsylvania, where they formed a society or organization called or known as "The Harmony Society," and on February 15th, 1805, they entered into a written contract with each other, in German, a copy of the translation of which, not including the signatures, is attached to the answer of G. Riethmueller and others as Exhibit "A," and is as follows, viz.:

"Be it hereby known to all who need to know it that the following agreement has this day been made and concluded between us, the subscribers of the one part and George Rapp and his associates of the other part:

"ARTICLE 1. We, the subscribers, on our part and on the part of our heirs and descendants, deliver up, renounce and remit all our estate and property, consisting of cash, land and chattels or whatever it may be, to George Rapp and his associates, in Harmony, Butler County, Pennsylvania, as a free gift or donation, for the benefit and use of the community there, and bind ourselves on our part as well as on the part of our heirs and descendants, to make free renunciation thereof, and to leave the same at the disposal of the superintendents of the community, as if we never had nor possessed it.

"ARTICLE 2. We do pledge ourselves jointly and severally to submit to the laws and regulations of the community, and to show due and ready obedience toward those who are appointed and chosen by the community as superintendents in such a manner that not only we ourselves endeavor by the labor of our

hands to promote the good and interest of the community, but also to hold our children and families to do the same.

"ARTICLE 3. If, contrary to our expectation, the case should happen and we jointly or severally could not stand to it in the community, and we would within a few or more years break our promises and withdraw from the community for whatever cause it may be, never to demand any reward, either for ourselves or children or those belonging to us for any of our labor or services rendered, but whatever we jointly and severally shall or may do we will have all done as a voluntary service for our brethren.

"In consideration whereof George Rapp and his associates adopt the subscribers jointly and severally as members of the community, whereby each of them obtains the privilege to be present at each religious meeting; not only they themselves, but also their children and families shall and will receive the same necessary instructions in church and school which is needful and requisite for their temporal good and welfare as well as eternal felicity.

"ARTICLE 4. George Rapp and his associates promise to supply the subscribers jointly and severally with all the necessaries of life, as lodging, meat, drink and clothing, etc., and not only during their healthful days, but also when one or more of them become sick or otherwise unfit for labor, they shall have and enjoy the same support and maintenance as before; and if after a short or long period the father or mother of a family should die, or be otherwise departed from the community and leave a family behind, they shall not be left widows or orphans, but partake of the same rights and maintenance as long as they live or remain in the community, as well in sick as healthful days, the same as before or as circumstances or necessity may require.

"ARTICLE 5. And if the case should happen as stated above, that one or more of the subscribers after a short or a long period should break their promise and could or would not submit to the laws and regulations of the church or community, and for that or any other cause would leave Harmony, George Rapp and his associates promise to refund him or them the value of his or their property, brought in without interest, in one, two or three annual installments, as the sum may be, large or small; and if one or more of them were poor and brought nothing in the community, they shall, provided they depart openly and orderly, receive a donation in money, according to his or their conduct while a member or as he or their circumstances and necessities may require,

which George Rapp and his associates shall determine at his or their departure.

"In confirmation whereof both parties have signed their names.

"Done in Harmony, February 15th, 1805."

They became the owners of about seven thousand acres of land at Harmony, Butler County, which on May 6th, 1815, was conveyed by Frederick Rapp as their attorney in fact to Abraham Ziegler, for the consideration of $100,000. A certified copy of this deed is in evidence as "Exhibit No. 86." And in that year, or in 1814, the society removed from Butler County, Pennsylvania, to Posey County, State of Indiana, where, in 1821, a second agreement with each other in German was entered into by them. A copy of the translation of which, not including the signatures, is attached to the answer of Gottlieb Reithmueller, et al., as Exhibit "B"; and is as follows, viz.:

"Be it hereby known that to-day (20th January, 1821), in the year of our Lord one thousand eight hundred and twenty-one, the present agreement, treaty and alliance was made and concluded between us, the following persons, to wit: N. N. &c., of the one part and George Rapp and his association on the other part."

"After the aforesaid persons became sufficiently acquainted with the principles, rules and regulations of the community of George Rapp and his association, by virtue of their religious principles they have after long and mature reflection, out of their own free will, determined to join the community of said George Rapp and his association in Harmony, Butler County, State of Indiana; to that purpose the aforesaid persons, bind themselves and promise solemnly by these presents to comply with the ordinances, rules and regulations of the community, and render due obedience to the superintendents ordained by the community and to perform as much as possible all occupations and labors to which they are ordered, and help to promote the benefit, happiness and prosperity of the community. And if the case should happen that the aforesaid persons, jointly or singly, after a short or long period of time leave the community for any cause whatever, they hereby bind themselves jointly and each for himself separately never and in no case to bring any account nor make any claim, either against the association or any individual member thereof for their labor and services rendered; also never to make any demand, ask or claim any other payment, under any name and description whatsoever, but will do and have done all things out of Christian love for the good and benefit of the community, or else take it as

a gift if George Rapp and his association willingly give them something."

"However, George Rapp and his association in return adopt the aforesaid persons into their community, whereby they obtain prerogative to partake of all meetings for divine services, by which they receive in church and school the necessary instructions requisite and needful for their temporal benefit and happiness and eternal felicity. George Rapp and his association bind themselves further, to supply the aforesaid persons with all the wants and necessaries of life, to-wit: meat, drink and clothing, etc.; and, indeed, not only during their healthful days, but also if all or any of them get sick or otherwise infirm and unable to work, they shall as long as they remain members of the community receive and enjoy the same support as before during their better days, or as their circumstances may require.

"In confirmation of these presents we, both parties, have hereunto set our hands and seals.

"Done at Harmony the days and year above stated."

This agreement and that of 1805 remained in the possession of the society until a short time prior to the filing of the bill in this case, when they were lost; but the copies attached to the answer were considered by both defendants and plaintiffs as offered in evidence as correct copies of the agreements.

In 1825 the society removed from Indiana to Beaver County, Pennsylvania, where they purchased and settled upon a tract of land containing about 3,000 acres, now known as "Economy," where they have since remained, and which has since become very valuable, and on which they have erected many buildings, including dwellings and factories of various kinds, and made many valuable improvements.

In 1827 the agreement, written in both English and German, on pages one to eleven of Exhibit No. 18 in evidence, was entered into by the then members of the association. The English version of this agreement is as follows, viz.:

"WHEREAS, By the favor of Divine Providence, an association or community has been formed by George Rapp and many others upon the basis of Christian Fellowship, the principles of which being faithfully derived from the sacred Scriptures, include the government of the patriarchal age, united to the community of property adopted in the days of the apostles, and wherein the single object sought is to approximate, so far as human imperfection will allow, to the fulfillment of the will of God by the exercise of those affections and the practice of those virtues which

are essential to the happiness of man in time and throughout eternity:

"AND WHEREAS, It is necessary to the good order and well-being ing of said associations that the condition of membership should be clearly understood, and that the rights, and privileges and duties of every individual therein should be so defined as to prevent mistake or disappointment on the one hand, and contention or disagreement on the other;

"*Therefore*, Be it known to all whom it may concern: That we, the undersigned, citizens of Beaver County, in the Commonwealth of Pennsylvania, do severally and distinctly, each for himself, covenant, grant, and agree to and with the said George Rapp and his associates, as follows, to-wit:

"ARTICLE 1. We, the undersigned, for ourselves, our heirs, executors and administrators, do hereby give, grant, and forever convey to the said George Rapp and his associates, and their heirs and assigns, all our property, real, personal and mixed, whether it be lands and tenements, goods, and chattels, money or debts due to us, jointly or severally, in possession, or in remainder, or in revision, or in expectancy, whatsoever or wheresoever, without evasion, or qualification, or reserve, as a free gift or donation, for the benefit and use of the said association or community; and we do hereby bind ourselves, our heirs, executors and administrators to all such other acts as may be necessary to vest a perfect title to the same in the said association, and to place the said property at the full disposal of the superintendents of the said community without delay.

"ARTICLE 2. We do further covenant and agree to and with the said George Rapp and his associates, that we will severally submit faithfully to the laws and regulations of the said community, and will at all times manifest a cheerful and ready obedience toward those who are or may be appointed as superintendents thereof, holding ourselves bound to promote the interests and welfare of the said community, not only by the labor of our own hands, but also by that of our children, or families and others who now are or hereafter may be under our control.

"ARTICLE 3. If, contrary to our expectations, it should happen that we could not render the faithful obedience aforesaid, and should be induced, from that or any other cause to withdraw from the said association then and in such case we do expressly covenant and agree to and with the said George Rapp and his associates that we will never claim or demand, either for ourselves, our children or for any one belonging to us, directly or indirectly, any compensation, wages or reward whatever for our

or their labor or services rendered to the said community, or to any member thereof; but whatever we or our families jointly or severally shall or may do, all shall be held and considered as a voluntary service for our brethren.

"ARTICLE 4. In consideration of the premises, the said George Rapp and his associates do by these presents adopt the undersigned, jointly and severally, as members of the said community, whereby each of them obtains the privilege of being present at every religious meeting, and of receiving, not only for themselves but also for their children and families all such instructions in church and school as may be reasonably required, both for their temporal good and for their eternal felicity.

"ARTICLE 5. The said George Rapp and his associates further agree to supply the undersigned severally with all the necessaries of life, as clothing, meat, drink, lodging, &c., for themselves and their families; and this provision is not only limited to their days of health and strength, but when any of them shall become sick, infirm or otherwise unfit for labor, the same support and maintenance shall be allowed as before, together with such medicine, care and attendance and consolation as their situation may reasonably demand. And if at any time after they have become members of the association the father and mother of a family should die or be otherwise separated from the community, and shall leave their family behind, such family shall not be left orphans or destitute but shall partake of the same rights or maintenance as before, so long as they remain in the association, as well in sickness as in health, and to such extent as their circumstances may require.

"ARTICLE 6. And if it should so happen as above mentioned that any of the undersigned should violate his or her agreement, and would or could not submit to the laws and regulations of the church or community, and for that or any other reason should withdraw from the association, then the said George Rapp and his associates agree to refund to him or them the value of all such property as he or they may have brought into the community in compliance with the first article of this agreement, and the said value to be refunded without interest in one, two or three annual installments, as the said George Rapp and his associates shall determine. And if the person or persons so withdrawing themselves were poor, and brought nothing into the community, notwithstanding, if they depart openly and regularly, they shall receive a donation in money, according to the length of their stay and to their conduct and to such an amount as their neces-

sities may require in the judgment of the superintendents of the association.

"In witness whereof and in testimony that the undersigned have become members of the said community, upon the conditions aforesaid, they have hereunto severally and each for himself set their hands and seals, on the ninth day of March, in the year of our Lord, one thousand eight hundred and twenty-seven."

(Signatures).

This agreement, so written in English and German, was signed on March 9th, 1827, by 522 members of the association, whose signatures appear on pages 11 to 35 of Exhibit No. 18, attested by the signatures of John H. Hopkins and Charles L. Voltz, as having been signed in their presence; and afterwards, at various times from March 9th, 1827, until February 14th, 1836, was signed by 144 additional members, whose signatures appear on pages 35 to 43 of said Exhibit No. 18, all attested by Charles L. Voltz and John H. Hopkins as witnesses, as having been signed or acknowledged in their presence. A copy of this agreement is attached to the answer of G. Reithmueller *et al* as Exhibit "C."

In 1832, dissensions having arisen in the society, a large number of the members withdrew from the society, under the leadership of one Count De Leon. And on March 6th, 1832, a written agreement, under seal (Exhibit No. 82, offered in evidence by the defendants. See page 2786 of typewritten testimony) was entered into between George Rapp and his associates (viz., those who remained in the society) of the first part, and the withdrawing members of the other part, whereby the withdrawing members, in consideration of the sum of one hundred and five thousand dollars paid, or to be paid, to one of their number in trust for them, and of a present of sixty thousand francs to two women —apparently in France—"do jointly and severally withdraw from the Harmonie Society as established at Economy aforesaid, and will from this date cease to be members thereof, and they do jointly and severally, for themselves and for all claiming through or under them, grant, remise, release and quit-claim unto George Rapp and his associates, parties of the first part, all their right, title, interest and claim in law or equity, in and to all the estate, real and personal and mixed, belonging to the society of George Rapp and his associates, or vested in any person or persons in trust for them. They further release unto the parties of the first part all claims or demands on account of deposits of money and property made in said Harmonie Society by each and every one of them and by their ancestors or relatives, and they severally re-

lease to the parties of the first part and to each of them all actions and causes of action whatever, now or hereafter existing."

This agreement was signed by George Rapp and 181 others as parties of the first part, and 176 persons as withdrawing members, as parties of the second part.

In 1836 another agreement, under seal, written in English and German and dated October 31st, 1836, was executed by 391 members of the society, *revoking and annulling* the sixth article of the agreement of March 9th, 1827, which had provided for the refunding to withdrawing members the value without interest of the property or money contributed by them to the society, and confirming and continuing the remainder of that agreement. This agreement, with the signatures thereto attested by Charles L. Voltz and Wm. P. Baum, contained on pages 44 to 66 of Exhibit 18 in evidence, was afterwards accepted and adopted by thirty-three others, whose acceptances with their signatures are contained on pages 67 to 69 of said Exhibit No. 18. A copy of this agreement is attached to the answer of G. Riethmueller *et al*, as Exhibit "D."

The English version of this agreement, not including the signatures, is as follows, viz.:

"WHEREAS, The Harmony Society, consisting of George Rapp and many others, now established in the town of Economy, in Beaver County, Pennsylvania, did, on the 9th of March, 1827, enter into certain articles of association, of which the 6th in number is as follows, viz.:

" 'And if it would so happen as above mentioned, that any of the undersigned should violate his or their agreement, and would or could not submit to the laws and regulations of the church or community, and for that or any other cause should withdraw from the association, that the said George Rapp and his associates agree to refund to him or them the value of all such property as he or they may have brought into the community, in compliance with the first article of this agreement, the said value to be refunded without interest, in one, two or three annual installments, as the said George Rapp and his associates shall determine.

" 'And if any person or persons so withdrawing themselves were poor, and brought nothing into the community, yet if they depart openly and regularly they shall receive a donation in money, according to the length of their stay and to their conduct, and to such amount as their necessities may require, in the judgment of the superintendents of the association.'

"AND WHEREAS, The provisions of the said 6th article, though assented to at the time, manifestly depart from the great

principle of a community of goods and may tend to foster and perpetuate a feeling of inequality at variance with the true spirit and objects of the association;

"AND WHEREAS, The principle of restoration of property, besides its pernicious tendency, is one which cannot now be enforced with uniformity and fairness, inasmuch as the members of the association in the year 1816, under a solemn conviction of the truth of what is above recited, did destroy all record and memorial of the respective contributions up to that time;

"AND WHEREAS, Continued happiness and prosperity of the association, a more intimate knowledge of each other, have removed from the minds of all members the least apprehension of injustice and bad faith;

"NOW THEREFORE, Be it known by these presents that the undersigned, with a view to carry out fully the great principles of our union, and in consideration of the benefits to be derived therefrom, do hereby solemnly enter into covenants, and agree with each other as follows:

"1st. The said 6th article is entirely annulled and made void, as if it had never existed; all others remain in full force as heretofore.

"2nd. All the property of the society, real, personal and mixed, in law or equity, and howsoever contributed or acquired, shall be deemed now and forever joint and indivisible stock. Each individual is to be considered to have finally and irrevocably parted with all his former contributions, whether in land, goods, money or labor; and the same rule shall apply to all future contributions whatever they may be.

"3rd. Should any individual withdraw from the society, or depart this life, neither he in the one case nor his representatives in the other shall be entitled to demand an account of said contributions, whether in land, goods, money or labor, or to claim anything from the society as matter of right. But it shall be left altogether to the discretion of the superintendent to decide whether any, and if any what allowance shall be made to such member or his representatives as a donation.

"Invoking the blessing of God on this sacrifice of all narrow and selfish feelings to the true purposes of the association and to the advancement of our own permanent prosperity and happiness, we have signed the foregoing instrument, and affixed thereunto our respective seals, at Economy this 31st day of October, 1836."

(Signatures.)

Prior to his death in 1834, Frederick Rapp, a member of the society, had been the business agent of the society, transacting its external business. After his death the members of the society on July 5th, 1834, executed a power of attorney to George Rapp —Exhibit No. 85 in exidence—constituting him general agent of the society in all its temporal affairs, with power to appoint agents and substitutes under him. Under this power, he on the same day appointed Romulus L. Baker and Jacob Henrici his substitutes. This power of attorney was signed by four hundred and two members of the association, and with the substitution and not including the signatures, is as follows:

"Know all men by these presents: WHEREAS, Frederick Rapp, of Economy, in Beaver County, State of Pennsylvania, recently deceased, was for a series of years the agent in temporal affairs of the Harmonie Society, carrying on in his own name all the external business of said society and taking to himself the titles to real estate as well as the evidence of claims arising out of the various transactions of said society;

"AND WHEREAS, By an instrument dated the 20th of July, 1825, under the hand and seal of said Frederick, he solemnly and irrevocably declared that all the property, real, personal and mixed, which then was or hereafter might be in his possession or enjoyment, or the title to which he then held or might hereafter hold, was and should be considered the property of the said society, in which he the said Frederick had no absolute interest whatsoever;

"AND WHEREAS, The lamented death of the said Frederick Rapp renders it indispensable that a new agent should be appointed, by whom the temporal affairs of the society may continue to be managed in a mode which has proved convenient and satisfactory;

"NOW, THEREFORE, Be it known,that we the undersigned, constituting said Harmonie Society, do hereby nominate and appoint George Rapp, of Economy, in the County of Beaver, the general agent of said society in all its temporal affairs.

"The powers intended to be conferred on the said George Rapp are hereby declared to be as follows, that is to say:

"1. To ask for, demand and receive from each and every bank or other incorporated company, partnership, or individual person or persons, the amount which may be due therefrom, in the way of principal, interest or dividend to the said Harmonie Society, or to Frederick Rapp, whether the same be evidenced by judgment, mortgage, bond, certificate of stock, note, bill of exchange, deposit of money, book account, verbal promise, sale or barter, loan or money, or a rise in any other manner whatsoever,

the check, order, receipt, acquittance or release of the said George Rapp to be as effectual as if executed by all and each of us, or as if it had been executed by the said Frederick Rapp in his life time.

"2. To execute and receive all deeds and conveyances, in fee simple or otherwise, on behalf of the society, whether the title thereto stand in the name of the society or of Frederick Rapp or of George Rapp and associates. The act of the said George Rapp relative thereto to be as valid and sufficient as if executed by us or by the said Frederick Rapp in his life time.

"3. To carry on, by himself or through the agents whom he is hereinafter authorized to appoint, all the dealings and traffic of said society of every description.

"4. To constitute and appoint an agent or agents under him as he may deem advisable, imparting to such substitute or substitutes should he think fit the whole or any portion of the authority hereby conferred on himself. He may also at his pleasure revoke such instrument of substitution whenever he may think such revocation called for by the interests of the society.

"5. It is distinctly understood that in accepting and acting under this power the said George Rapp disclaims all personal interest other than that of a member of said society in the present resources or future earnings of the society, in conformity with the principles and terms upon which the Harmony Society was originally founded, as fully and effectually as was done by the late Frederick Rapp in the instrument already averted to, dated 20th July, 1825, the terms of which instrument the said George Rapp hereby adopts for himself and repeats in every particular.

"In witness whereof the undersigned members of the Harmonie Society who constitute said society, have hereunto set their hands and seals at Economy, in Beaver County, this fifth day of July, in the year of our Lord, eighteen hundred and thirty-four."

(Signatures.)

(Acknowledgment.)

"By virtue of the authority expressed in the fourth article of the foregoing power of attorney, I do appoint and substitute in my place and stead, Romulus L. Baker and Jacob Henrici, of Economy, Beaver County, Pennsylvania, to act as general agents of the Harmonie Society aforesaid, jointly or severally in my name, and for the use of the said society to do and perform all acts and things which as the general agent of said society I am authorized to do. It being distinctly understood, however, that in accepting and performing the office and business of general agents of the said society, the said R. L. Baker and Jacob Henrici shall neither acquire nor claim any personal interest in the present resources or future

earnings of the said society other than that of a member of the said society, agreeably to the plans and terms of association, but shall be considered as exercising the same trust mentioned in a declaration of trust signed by Frederick Rapp on the 20th day of July, 1825, and referred to in the foregoing power of attorney to George Rapp.

"Witness my hand and seal this fifth day of July, A. D. eighteen hundred and thirty-four.

"GEORGE RAPP." [SEAL]

"Signed, sealed and delivered
in presence of
"WM. ALLISON,
"JOHN NEELY."

(Acknowledgment.)

George Rapp the founder of the society, continued until his death in 1847, to be its head or superintendent and to rule and govern it. After his death another agreement, under seal, dated August 12, 1847, was executed in duplicate by the members of the society; one, in both English and German, with its signatures, is contained on pages 74 to 98 of Exhibit No. 18 in evidence and the other, in English, signed and duly acknowledged by the same persons—being Exhibit No. 83—which was recorded in Beaver County, in Deed Book 8, page 121. This agreement was signed by two hundred and eighty-eight members of the society. This agreement (a copy of which is attached to the answer of G. Riethmueller *et al.*, Exhibit "E")—not including the signatures—is as follows, viz.:

"WHEREAS, By the decree of God, the venerable patriarch and much-beloved founder and leader of the Harmony Society, George Rapp, has departed this life, whereby its members are deprived of his Christian fellowship and religious ministry, and of his superintendence in their temporal affairs; and, whereas in consequence of this deeply afflicting dispensation it has become necessary to the good order and well-being of the association that some plan should be agreed upon to regulate its future affairs, promote its general welfare and preserve and maintain it upon its original basis;

"THEREFORE, Be it known to all whom it may concern, that we, the undersigned, surviving and remaining members of the Harmony Society, and constituting the same, do severally and distinctly, each for himself, covenant, grant and agree to and with all the others thereof, and with those who shall hereafter become members as follows: That is to say,

"ARTICLE 1ST. We do hereby solemnly recognize, re-establish and continue the articles of our association (the sixth section ex-

cepted), entered into at Economy on the 9th day of March, A. D. 1827, in the presence of John H. Hopkins and Charles L. Voltz, and the supplement thereto, adopted at the same place on the 31st day of October, A. D. 1836, in the presence of Charles L. Voltz and William P. Baum, except so far as the same are affected by the death of the said George Rapp, or hereinafter altered or modified, and to this extent we declare the said articles to remain in full force.

"ARTICLE 2ND. We hereby ordain and establish a Board of Elders, which shall consist of nine members of the Harmony Society and their successors, to be chosen as hereinafter provided: John Stahl, John Schnabel, Adam Nachtrieb, Matthew Scholle, Joseph Hoerule, John Eberle, Romulus L. Baker, Jacob Henrici, Johnathan Lenz shall be the first Board.

"ARTICLE 3RD. The Board of Elders shall have and exercise the following powers, to-wit: 1st. To regulate and manage exclusively the internal temporal concerns of the Harmony Society; to appoint and remove superintendents in the several departments of industry; to make regulations and give orders in relation to their business operations, and generally to take care that the members perform the duties assigned to them. 2nd. To determine all disputes and misunderstandings amongst the members of the society; to advise, and if necessary, reprove any member who may be in fault or found delinquent in his duty. 3rd. To admit new members into the society and to expel them therefrom. New members when admitted shall subscribe to this agreement as the evidence of their membership, and of the rights acquired by, and the duties imposed upon them. 4th. To establish regulations for the maintenance and improvement of the morals of the society and for the instruction of its members. 5th. To appoint one or more of its members spiritual leaders and instructors, with such authority in relation to church discipline as shall be conferred by the Board. 6th. To remove from the Board of Elders and to declare his seat vacated, also to remove from office either or both of the trustees hereinafter appointed for the management of the external affairs and their successors in office. 7th. To fill all vacancies in the Board of Elders occasioned by the death, resignation or removal from office of any of its members and their successors, and so as often as a vacancy shall occur, to fill all vacancies in the office of trustee, when either or both of the trustees or their successors shall die, resign his office or be removed from the same, and so often as a vacancy shall occur. 8th. The concurrence of six members of the Board of Elders shall be deemed the act of the Board, and a legal exercise of any of the powers hereinbefore conferred on the said Board. 9th. A record book shall be kept in which the Board of

Elders shall enter all proceedings that they shall consider of sufficient importance to be preserved. In all controversies, judicial or otherwise, in which the society or any of its members may be a party, such record shall be full and absolute evidence of the facts and proceedings therein contained, and the affirmation of any elder shall be competent evidence of the identity of the said record.

"ARTICLE 4TH. We do further ordain and establish a Board of Trustees for the exclusive management of the external business and affairs of the society, which Board shall consist of two persons who shall be members of the Board of Elders, and their successors who shall be appointed as hereinafter provided. Romulus L. Baker and Jacob Henrici shall be the first Board of Trustees.

"ARTICLE 5TH. The said trustees shall jointly and severally have and exercise the powers following, to-wit: 1st. In their own names or that of either of them, or otherwise, to purchase and sell, deal, barter, exchange and traffic, make all contracts and bargains in the prosecution of the business, to invest the funds in stocks and other securities, and make transfers and assignments, to collect debts receive and pay out moneys, settle claims, compromise disputes, institute legal proceedings, appoint and dismiss agents, clerks and attorneys in fact and at law, and generally to transact all the external business affairs of the society. 2nd. To make donations to seceding and excluded members, and to the representatives of those who are deceased, and for such benevolent and charitable purposes as they may deem prudent and fit. 3rd. The said trustees shall have power jointly to purchase real estate in their own names and also in their joint names, to grant, bargain, sell and convey all or any of the lands and tenements now or hereafter owned by or belonging to the said society, and for this purpose to execute deeds of conveyance in fee simple or otherwise in their joint names, but the proceeds of all such sales shall be held in trust for the society. 4th. For the purpose of providing an effectual and convenient remedy in law for all injuries to the property of the said society, real and personal, by trespass, ouster, detention, conversion or otherwise, the said trustees are hereby invested with the rights of possession, entry and action in their own names as fully and to all intents and purposes as do and may exist in the said society, and to effectuate this object more completely and in consideration thereof, we grant and transfer to the said trustees all such title and interest in the said property as shall be necessary therefor. The proceeds of all suits to be brought shall be in trust for the society. 5th. The powers hereby vested in the said trustees shall extend to and embrace all the property of said society, real, personal or mixed,

whether standing or held in the name of the late Frederick Rapp, the said George Rapp, or in any other name or form whatsoever.

"ARTICLE 6TH. It is hereby distinctly and absolutely declared and provided that all the property, real, personal and mixed, which now or hereafter shall be held or acquired by any trustee or trustees or person under them, is and shall be deemed the common property of said society, and each trustee now or hereafter appointed, hereby disclaims all personal interest in the present resources and future earnings of the society, other than that of a member thereof, according to the articles of association hereby re-established and continued, and according to the present agreement.

"IN WITNESS WHEREOF, We, the undersigned members of the Harmony Society who constitute the said association, have to these articles, executed in English and in German, hereunto set our hands and seals at Economy, in Beaver County, this 12th day of August, A. D., 1847.

(Signatures.)

(Certificate of Acknowledgment.)

"Read over to and signed and sealed by the several persons whose names are subscribed in the presence of us.

"W. P. BAUM,
"FRANCIS LE GOULLON,
"ANDREW BIMBER."

The agreements of 1805, 1821, 1827, 1836 and 1847 are the only agreements or contracts made between the members of the society prior to 1890, and are the only ones that are material to the question of the property rights of the plaintiffs. Those of 1827, 1836 and 1847 are called by the witnesses, and are the constitutions of the society, and were signed by all the members at or about the time of their date, by those who were then members, and by those who afterwards became members at the time of their admission to the society.

These are the agreements and documents under which or some of which the plaintiffs claim the right to share in the property and assets of the society as heirs of former members.

The plaintiffs are Christian Schwartz, Antony Koterba, David Strohaker, Allen Shale and G. L. Shale.

Christian Schwartz claims as sole heir of his father, Christopher —or Christoff—Schwartz; his mother, Barbara Schwartz; his brother, Joseph Schwartz, and his sisters, Katrina Schwartz, Fredericka Schwartz, Maria Schwartz and Louisa Schwartz, and in his own right as a former member.

Christopher Schwartz and Barbara, his wife, were born in Ger-

many, and came to Birmingham, now Pittsburgh, in 1817; and in 1828, or the beginning of 1827, went with their family to Economy, and were admitted to the society as members. They remained in the society as members until they died—Christopher on July 12th, 1858, and Barbara on April 11th, 1857. Christopher worked first on the farm, afterwards as carpenter and in the laundry, and was an active worker. Barbara worked at household duties, and in the summer in the fields and in winter spun flax. Christopher signed the agreements of March 9th, 1827 (Exhibit 18, page 35); of October 31st, 1836 (Exhibit 18, page 49), and of August 12, 1847 (Exhibit No. 13, page 90). His name also appears at the foot of the ninth page of the recorded copy of the same agreement (Exhibit No. 83), on the 8th page of the De Leon agreement (Exhibit No. 82) and on the 6th page of the power of attorney to George Rapp (Exhibit No. 85).

Barbara Schwartz signed the agreement of 1827 (Exhibit No. 18, page 35) and the agreement of 1847 (Exhibit No. 18, page 93). Her name also appears on the 11th page of the recorded copy of the same agreement (Exhibit No. 83) and on the 9th page of the power of attorney to George Rapp (Exhibit No. 85).

Katharina Schwartz, the oldest child of Christopher and Barbara Schwartz, was born in Germany, and was thirteen years old when she came to Economy with her parents. She was afterwards admitted to the society February 15th, 1833, and continued in it until her death, in August, 1888, intestate and unmarried. While she remained in the society she worked in the cotton mill. She signed the agreement of March 9th, 1827 (Exhibit No. 18, page 41), the agreemen. of October 31st, 1836 (Exhibit No. 18, page 65), and the agreement of 1847 (Exhibit No. 18, page 97). Her name appears on page 14 of the recorded copy of the same agreement (Exhibit No. 83), and on the 11th page of the power of attorney to George Rapp (Exhibit No. 85).

Fredericka Schwartz was born also in Germany and came with her parents to Economy. She was admitted as a member of the society on February 14th, 1835, and continued a member until her death, unmarried, intestate and without issue in 1857. She worked in the cotton factory. She signed the agreements of March 9th, 1827; of October 31st, 1836, and of August 12th, 1847 (Exhibit No. 18, pages 42, 65 and 96). Her name also appears on page 13 of the recorded copy of agreement of 1847 (Exhibit No. 83), and on the 11th page of the power of attorney to George Rapp (Exhibit No. 85). She was never married.

Maria, or Mary Schwartz was born in Birmingham—now Pittsburgh—and came to Economy with her parents; was afterwards,

on February 15th, 1833, admitted to the society, and continued a member until her death, intestate and without issue, in 1878. She worked about thirty years in the cotton mill. She signed the agreement of 1836 (Exhibit No. 18, page 67), and the agreement of 1847 (Exhibit No. 18, page 97). Her name also appears on the 14th page of the recorded copy of the agreement of 1847 (Exhibit No. 83). She was never married.

Louisa Schwartz was born in Birmingham—now Pittsburgh—and came to Economy with her parents; was afterwards, on February 15th, 1844, admitted to the society, and continued a member until her death, intestate and without issue, on March 20th, 1889. She worked in the silk factory from the time she came to Economy. She signed the agreements of 1836 (Exhibit No. 18, page 69) and of 1847 (Exhibit No. 18, page 97). Her name also appears on the 14th page of the recorded copy of the agreement of 1847 (Exhibit No. 83). She was never married.

Joseph Schwartz, brother of Christian, plaintiff, was born in Birmingham—now Pittsburgh—and came to Economy with his parents, and was afterwards, on February 15th, 1847, admitted to the society, and remained in Economy as a member of the society until his death, intestate, unmarried and without issue, on June 25th, 1889. He worked in the woolen factory. He signed the agreements of 1836 (Exhibit No. 18, page 73) and of 1847 (Exhibit No. 18, page 81). His name also appears on the 10th page of the recorded copy of the agreement of 1847 (Exhibit No. 83).

Joel Schwartz, youngest of the family, was born in Economy, remained there about twenty years, but never became a member of the society, and died intestate, unmarried and without issue in 1858.

All these several parties, in addition to their work in the cotton, wool and silk factories, worked on the farm during the harvest time.

Christian Schwartz, one of the plaintiffs, was born in Birmingham—now Pittsburgh, and came to Economy with his parents when about three years of age, and remained there about twenty years, until April, 1846, when he left Economy to get married. During this time he worked in the woolen factory about seven years, and also on the farm and in the blacksmith shop. When he left Economy he received ten dollars from Mr. Baker, a member of the society, and afterwards received thirty-five dollars more from the society, and was fed and clothed during all the time he was at Economy.

Christian Schwartz testified (page 103, type-written testimony) that he never became a member of the society; and this is confirmed by the testimony of Fredericka Muntz, a member admitted November 7th, 1841 (Exhibit No. 18, page 70), who states (pages 2106,

2107, type-written testimony) that he never joined the society When recalled by the defendants he (on page 2427, etc., type-written testimony) states that the only persons he claims through are his father and mother, four sisters and his brother Joseph, but says he joined the society on February 15th, 1845, which he explains by saying that he reported to Father Rapp, before the 15th of February, that he wanted to be admitted; that on the 15th, which was the day on which members were admitted, he was sick and could not attend, but that Father Rapp sent to him in the night to take the Lord's Supper—and sent it to him at the house, because he couldn't go—which only members received at that time; that Father Rapp treated him as a member, but he did not sign any papers. He left Economy in April, 1846, and never returned, except as a visitor. A reference to Exhibit No. 18, which contains the agreements of 1827, 1836 and 1847, which all members were required to sign upon their admission, shows that he never signed them, and that no members were admitted in February of 1845 or February, 1846. The master, therefore, finds as fact that if it was the intention of the society, or of Father Rapp as the head, to admit him, his admission had never been completed by his signing the agreements of membership, and that he never became a member of the society.

It is alleged in the bill that these decedents, in addition to giving to the society large sums of money at the time of joining it, contributed very largely to its growth by their labor. The answer denies that they contributed cash or other property of any consequence to the society. There is no evidence that Christopher Schwartz, or Barbara Schwartz, his wife, or any of their children, gave or contributed any money or other property to the society upon their admission, or at any other time. Nor is it shown that they had any money or property to give. The master finds that none of them ever gave or contributed anything to the society except their labor, for which they received their support and maintenance until their death, in accordance with the agreements which they had signed. And that Christian Schwartz is their heir and entitled to inherit their estates.

Antony Koterba, the second plaintiff, never was a member of the Harmony Society, but claims as one of the heirs of his father, Joseph Koterba, and of his half-brother, Andrew Koterba, or Andreas Goterwa—being different ways of spelling the same name. (See testimony of Antony Koterba, page 2314 of type-written notes of testimony.)

It is averred in the bill and not denied in the answers, that Joseph Koterba, the father of the plaintiff, Antony Koterba, was one of the founders of the Harmony Society, having come from

Germany with Father Rapp and assisted in the organization of the society in Butler County in 1805. Two years later, Andrew Koterba, the half-brother of the plaintiff, Antony, was born in the society and remained therein seventy-three years, until his death in 1860, intestate, unmarried and without issue, and leaving, as his heir the plaintiff, Antony Koterba.

And on June 14th, 1895, the following admission by both parties was made at the hearing before the master (see page 1031 of the type-written notes of testimony), viz.:

"It is admitted by counsel for respective parties that the witness on the stand (Antony Koterba), one of the plaintiffs, is a half-brother of Andreas Goterwa, and a son of Joseph Koterba, and is entitled under the intestate laws of Pennsylvania to inherit in whole or in part the estate of the said Andreas Goterwa, or that of Joseph Koterba, the said Andreas Goterwa and Joseph Koterba being members of the society and signatories of the constitution of 1827, and the name of Andreas Goterwa appearing to the agreement or constitution of 1836, and also to that of 1847; this admission being made without prejudice to the defense as to any right of said witness to share in the fund of the Harmony Society."

Antony Koterba also testified (pages 1031 and 1036 of type-written notes of testimony) that his father, Joseph Koterba, withdrew from the society on November 13th, 1827, and died in Mahoning County, Ohio, on February 27th, 1860; that his half-brother Andreas Goterwa, died at Economy, unmarried and intestate, on May 25th, 1880, and that Andreas superintended the blacksmith-shop in Economy and was constable there for thirty or forty years. He also, in his later examination (page 2313 of type-written notes of testimony) identified the signatures of Andreas Goterwa to the agreements of 1836 and 1847, on pages 53 and 89 of Exhibit No. 18.

It is not alleged in the bill nor is there any evidence that either Joseph Koterba or Andreas Goterwa ever contributed or gave to the Harmony Society any money or other property.

The master therefore finds that Joseph Koterba assisted in the organization of the society in 1805; that he signed the constitution or agreement of March 9th, 1827, and withdrew from the society on November 13th, 1827, went to Ohio and lived there until he died on February 27th, 1860; that Andreas Goterwa was born in the society in 1807, signed the agreements of March 9th, 1827, October 31st, 1836, and August 12th, 1847, and continued a member of the society until he died at Economy on May 25th,

1880—intestate and unmarried; that neither Joseph Koterba nor Andreas Goterwa ever gave or contributed any money or other property to the Harmony Society; and that the plaintiff, Antony Koterba, is an heir of said Joseph and Andreas.

David Strohaker, the third plaintiff, was born and has always lived in Columbiana County, Ohio; was sixty-seven years of age in 1895 and was never a member of the Harmony Society. He claims as an heir of his parents, Christopher Strohaker and Mary (or Maria) Strohaker—formerly Rief—and his grandparents, both paternal and maternal.

It is averred in the bill and not denied in the answer that the paternal and maternal grandparents of David Strohaker joined the Harmony Society in 1805, and continued members until their death, and died intestate; that his father, Christopher Strohaker, was a member of the society and continued such until his marriage with Mary Rief, when he left the society. It is also averred that Mary Rief was a member of the society; but this is denied in the answer and there is no evidence to support the averment, and her name does not appear as a signer of any of the agreements or papers in evidence.

Christopher Strohaker, the father of the plaintiff, withdrew from the society in 1827, and with his wife, Mary, went to Columbiana County, Ohio, where they died intestate, Christopher in 1867 and Maria in 1875, leaving four children, viz.: Jacob, Jonathan, Tersia and David, the plaintiff, who are all now living in Ohio. Christopher Strohaker and his wife never returned to the society except to visit.

Christopher, the father of the plaintiff, was the son of Christian Strohaker and his wife. The plaintiff, when on the witness stand did not remember and could not give either the maiden or given name of his grandmother Strohaker. (See notes of testimony, page 2321.) Both Christian Strohaker and his wife died in Indiana, between 1820 and 1825, leaving four children, viz.: Jacob, Catharina, Magdalena and Christopher. All these four were members of the society, their names appearing as signers of the agreement of March 9th, 1827, Exhibit No. 18, pages 18 and 24. As stated above, Christopher withdrew from the society in 1827. Jacob and Magdalena withdrew from the society in 1832, and went with Count De Leon, their names appearing as signers on pages 10 and 12 of Exhibit No. 82, of the agreement of separation among those withdrawing from the society. Catharina remained in the society, and signed the agreements of October 31st, 1836, and August 12th, 1847 (Exhibit 18, pages

58 and 96). She also signed the recorded copy of the agreement of 1847 (Exhibit No. 83, page 13). The plaintiff does not claim through Jacob and Magdalena Strohaker, who withdrew from the society and went with Count De Leon, as stated by his counsel on page 2329 of the notes of testimony.

Mary Strohaker—formerly Rief—wife of Christopher and mother of the plaintiff, was the only child of Matthias Rief and his wife, whose name the plaintiff stated in his testimony to have been Agnes (notes of testimony, page 2322). Matthias Rief died in Indiana between 1820 and 1825, and his wife died in Economy about 1836. The names of Matthias Rief and Maria his wife, Agnes Rief, Christian Strohaker and Christopher Strohaker are recited in the deed of Frederick Rapp to Abraham Ziegler, dated May 16th, 1815 (offered in evidence as Exhibit No. 86 by the defendants for the purpose of helping to show who the members of the Harmony Society were) as among the associates of George Rapp who signed the power of attorney to Frederick Rapp, authorizing him to execute said deed.

It is averred in the bill that the parents and grandparents of the plaintiff contributed many thousand dollars to the society. This is denied in the answer, and there is no sufficient evidence to show that any of the ancestors or persons through whom the plaintiff, David Strohaker, claims ever contributed any money or other property to the society. The only evidence offered is the testimony of David Strohaker, on pages 1044 to 1047 of the notes of testimony, that in 1837 or 1838, a Mr. Witzman and Romulus Baker came to his father's house to collect $300, which his father borrowed from the society, and that his mother had cried about it and said that she had to pay interest on her own money, "That she had to pay for her own money that they had put there in 1805 from their father's estate; that she had to pay interest on her own money;" and that Baker said, "If I could change it I would, but I haven't got the power." The amount was not mentioned. This does not amount to an admission on the part of the society that money had been contributed to it by any of the parties through whom the plaintiff claims.

The master, therefore, finds that Christian Strohaker and wife, and Matthias Rief and wife, the grandparents of the plaintiff David Strohaker, joined the society in 1805, and continued members until their deaths, as hereinbefore stated. That Christopher Strohaker, the father of said plaintiff, and Catharina Strohaker, his aunt, were members of the society and signed the agreement of March 9th, 1827; that Christopher Strohaker withdrew from the society in 1827, and never returned to it; that Catharina Stro-

haker signed the articles of October 31st, 1836 and of August 12th, 1847, and continued a member until she died in 1870. That the plaintiff is one of the heirs of the several parties, and entitled to a share of their estates. That none of the parties through whom the plaintiff claims ever contributed or gave any money or property to the society.

The other plaintiffs are *Allen Shale* and *G. L. Shale*, who claim as heirs of Jacob and Lawrence Scheel or Shale.

It is averred in the bill that Maria Scheel and her two sons, Jacob and Lawrence, came from Germany in 1804, and were among the first to join the Harmony Society; and that said Jacob and Lawrence Scheel assisted in building up the three towns of the society, and contributed largely, by their labors, to the founding and maintenance of the society.

The only part of this averment denied by the defendants is that Maria Sheel and her son Lawrence became members of the society. There is no evidence that Maria Scheel ever became a member of the society—except the testimony of Allen Shale, the plaintiff, whose only knowledge was by tradition in the family, or rather, as he stated in his cross-examination, type-written notes of testimony, pages 2339 and 2340, from the talk of his father, the grandson of Maria Scheel, and from the records in Butler County. His knowledge of Maria Scheel is very indefinite. He did not know when she died, nor where—stating (page 2338) that she died at New Harmony, Indiana, and (on page 2340) that she died at Harmony, Butler County, Pa. The name of Maria Scheel, or Shale, does not appear in any of the papers of the society, in evidence.

The names of both Jacob and Lawrence Scheel appear, as signers of the power of attorney of June 14th, 1814, to Frederick Rapp, as recited in his deed to Abraham Zeigler. Exhibit No. 86 offered in evidence by the defendants. And the name of Jacob Sheel also appears as a signer of the agreement of March 9th, 1827 (Exhibit 18, page 13), and as a signer of the agreement of separation of Count de Leon and his party (Exhibit No. 82, page 9) and of the power of attorney to George Rapp (Exhibit No. 85, page 6).

The master, therefore, finds that Jacob and Lawrence were members of the society, and that there is not sufficient evidence to show that Maria Scheel, their mother, ever became a member. And from the testimony of Allen Shale and other evidence, he also finds that Jacob Scheel signed the agreement of March 9th, 1827, and died unmarried, intestate and without issue in Economy about 1837; that Lawrence Scheel withdrew from the society in

1824 or 1826, and some three years afterwards married in Ohio, where he lived until he died in 1855, leaving five children, viz.: Andrew, Gustavus, Solomon, Lucinda and Gideon. Andrew married, and died December 12th, 1891, in Ohio, leaving three children, viz.: Allen, one of the plaintiffs, Richard and Isabel. Richard and Isabel are still living. The plaintiff, G. L. Shale, is one of the sons of Lawrence Scheel, and is at present living in South Dakota.

He also finds that the plaintiffs, G. L. Shale and Allen Shale, are two of the heirs-at-law of Lawrence Scheel and Jacob Scheel. And that neither the father or mother of Allen Shale, nor the plaintiffs, Allen and G. L. Shale, were ever members of the Harmony Society.

It is not averred in the bill, nor is there any evidence, that either Maria, Jacob or Lawrence Scheel ever contributed or gave to the society any money or property of any kind, or anything but their labor; and the master, therefore, finds that they never did contribute or give to the society any money or property of any kind.

It thus appears:

1st. That none of the plaintiffs were ever members of the society.

2d. That all of those members of the society through whom Christian Schwartz claims as their heir, signed the agreements of 1836 and 1874, and continued members until their death.

3rd. That Antony Koterba claims as heir of his father, Joseph Koterba, and his half-brother, Andreas Koterba, that Joseph Koterba joined in the organization of the society, and also signed the agreement of 1827, and afterwards, in 1827, withdrew from the society; and that Andreas Koterba signed the agreements of 1827, 1836 and 1847, and died a member of the society.

4th. That the grandparents of David Strohaker, viz., Christian Strohaker and wife, and Matthias Rief and wife, joined the society in 1805, and all remained members until their death—all dying between 1820 and 1825, except Mrs. Rief, who died between 1830 and 1836. That his father, Christopher Strohaker, signed the agreement of 1827, and withdrew from the society in 1827. That his aunt, Catharina Strohaker, signed the agreement of 1827, 1836 and 1847, and continued a member of the society until her death.

5th. That Lawrence Scheel and Jacob Scheel, ancestors of Allen and G. L. Shale, joined the society in 1805; that Lawrence

withdrew in 1824 or 1826; that Jacob Scheel signed the agreement of 1827 and died a member, about 1837.

6th. That none of the parties through whom the plaintiffs claim contributed any money or property to the society.

CONCLUSIONS OF LAW.

Upon these facts, as found, what are the rights and interests of these plaintiffs in the association or in its property upon its dissolution?

As they claim as heirs, they are bound by the agreements and contracts entered into or recognized by those through whom they claim—there being no charge or evidence that the execution of the agreements had been procured or induced by fraud or coercion.

The agreements of 1805 and 1827 are substantially the same in so far as they relate to the rights and duties of the members of the society. The agreement of 1836 modified these by taking away from withdrawing members the right to a return of the value of the property contributed by them. And the agreement of 1847 adopted a new plan of government of the society, which was made necessary by the death of George Rapp, until that time leader and ruler of the society.

On account of these changes in the agreements, the persons through whom the plaintiffs claim may be divided into three classes, viz.:

First. Those withdrawn from the society before the execution of the agreement of 1836.

Second. Those dying in the society before that time.

Third. Those who died members of the society after having joined in the agreements of 1836 and 1847.

The first class includes Joseph Koterba, the father of the plaintiff; Antony Koterba, Christopher Strohaker, father of David Strohaker, and Lawrence Scheel, the ancestor of plaintiffs G. L. and Allen Shale.

The second class includes Christian Strohaker and wife, and Matthias Rief and wife, the grandparents of plaintiff David Strohaker, and Jacob Scheel, uncle of G. L. Shale and granduncle of Allen Shale.

The third class includes Andreas Goterwa, half-brother of Antony Koterba, and Catharina Strohaker, aunt of David Strohaker, plaintiff and all of those through whom Christian Schwartz claims.

Of those included in the first class Lawrence Scheel withdrew in 1824 or 1826, and the others, viz.: Joseph Koterba and Christopher Strohaker, withdrew in 1827, after having signed the agreement of that year. As Lawrence Scheel was among the first

to join the society in 1805, and continued in it until 1824 or 1826, it must be presumed that he was bound by the terms of the agreement of organization of 1805, if not a party to it. Both the others signed the agreement of 1827. The first paragraphs of these two agreements are substantially the same although worded a little differently. In both, the parties to them make an absolute transfer of all their property to George Rapp for the use and benefit of the association. In the second paragraph in each, they agree to submit to the rules and regulations and to labor for the society. In the third article of each, they agree, in case of withdrawal from the society, to make no claim for the services of themselves or their families. In the fifth and sixth paragraphs of each agreement, in consideration of these stipulations, they are adopted as members of the society and promised instruction and maintenance and support for themselves and their families as long as they remain with the society. And in the last article of the agreement of 1805 and the sixth of that of 1827, it is agreed that in case of withdrawal for any cause from the society the value of the property contributed by them to the society should be refunded to them by the society, without interest. At this distance of time from the withdrawal of these parties, it must be presumed or assumed, that the agreements had been fully complied with, and that upon their withdrawal, they received from the society what they were entitled to under their agreement, viz.: the value of all the property they had brought into the society, and that during the continuance of their membership they had been maintained and supported by the society, as stipulated in both of said agreements; and, having agreed to make no claim for their labor, they had no longer any claim on, or interest in, the society. What claim could they have? They had received from the society the value of all the property they had brought into it, and for their labor they had received their support, maintenance and education, and had waived all claim for further payment. If they had no longer any claim against or interest in the society or its property, how could any pass to their heirs from them? And, therefore, the plaintiffs, so far as they claim as heirs of these withdrawing members, can have no rights or interest in the present property of the society; not as heirs of donors of property, because any given or its value, had been returned to the donors; nor as heirs of those contributing labor, because those who contributed the labor had received in their support full compensation for it, and had released all claims on account of it.

The second class of those through whom the plaintiffs claim are those who died members of the society, before the making of the

agreement of October 31st, 1836 ,viz.: Christian Strohaker and wife and Matthias Rief and wife and Jacob Scheel. These all joined the society in 1805 and remained in it until their death. Having joined the society in 1805, the year the first agreement was entered into, and having continued in it until their deaths some years after, and Jacob Scheel having signed the agreement of 1827, it must be presumed that they were parties to the agreement of 1805, their heirs claiming the benefit of it in alleging that they were members of the society.

It is claimed by the plaintiffs that there is no tontine or survivorship clause in the agreements of 1805 or 1827, and that, therefore, upon the death of those dying in membership of the society, their interest in the property of the society became vested in their heirs and not in the remaining members of the society.

The agreements of 1805 and 1827 were made in Pennsylvania and related to persons and property in Pennsylvania, and the present contest is in reference to property there, and therefore the decisions of its Courts on these agreements are entitled to great consideration in ascertaining the rights of parties under them.

These two agreements came up for consideration and construction before the Supreme Court of Pennsylvania in 1836 in the case of Schriber vs. Rapp, 5 Watts, 351. It was an action of account render, brought by Jacob Schriber, administrator of Peter Schriber deceased, against George Rapp *et al.*, doing business in company under the name of the Harmony Society. From the report the plaintiff appears to have been the son of Peter Schriber, the decedent. The facts as stated in the report were that Peter Schriber joined the society in 1806 and contributed to it some $8,000 in money. At that time he had a wife and eight or nine children, three of whom were in the society at the time of the trial of the case. On August 26th, 1826, he made a deed to George Rapp and his associates of all the property he had brought into the society or had afterwards contributed to it, and released, quit-claimed and discharged Rapp and his associates from all claims and demands against them. He died in 1833, being still a member of the society. It also appeared that he had signed the articles of association, which are quoted in full in the report. The lower court charged the jury, in part as follows, viz.:

"3. The article of association executed by the plaintiff's intestate are a complete bar to the plaintiff's recovery in this case, unless the plaintiff's intestate has had a fraud practiced upon him and been induced to sign them by fraud and imposition; if fraudulent, they would not bar." And "4. The deed and release are also a bar to the plaintiff's recovery, unless the intestate was

fraudulently imposed on, and the execution and delivery of them were procured by fraud and imposition." And "5. There is nothing in the articles of association given in evidence that renders the agreement unlawful or void; nothing in them inconsistent with constitutional rights, moral precepts or public policy."

These parts of the charge were assigned for error. The opinion of the Court by Gibson, C. J., is as follows:

"The points made at the argument are reducible to two, but one of which is attended with difficulty, for it is not susceptible of doubt that the articles and release, if fairly obtained, are conclusive of the right. An association for the purpose expressed is prohibited neither by statute nor the common law; and it is clear that, except for the amount of its income, this society would be entitled to a charter by our statutes of self-incorporation. It may be true that the business and pursuits of the present day are incompatible with the customs of the primitive Christians; but that is a matter for the consideration of those who propose to live in conformity with them. Our laws presume not to meddle with spiritualities, and religious societies are regarded by them with but an eye to their temporal consequences. It has not been pretended that this society is detrimental to the public or its neighbors. It is an ecclesiastical community, performing with alacrity its duties to the laws, rendering unto Cæsar the things that are Cæsar's, and fashioning its municipal rules of property and government after the models of those Christian societies that existed in the days of the apostles. Its most peculiar features are submission to the will of its founder, and equal participation of property brought into the common stock by individuals or produced by the labor of the whole. That it is not a partnership results from the fact that the profits are not shared in severalty.

"*At the period of initiation, the neophyte surrenders his worldly wealth to the society, reserving to himself but the contingent right of resumption in the event of his secession,* to which none but those who were creditors at the time could object, for all else would deal with him on the basis of a transfer already made. In the present instance it is not alleged that there were creditors; without which, as determined in Buchler *vs.* Gloninger, 2 Watts, 226, the administrator could not interfere. It is supposed, however, that as the intestate had power by the articles to secede from the society and take out of it whatever he had brought into it, the successor to his personal rights may exercise it as his representative. Such, however, are not the terms of the articles, nor would the posthumous exercise of the power consist with the disposition he thought fit to make by dying in fellowship. An exercise of it by

the administrator of one dead without kindred would wrest the property from the society only to give it to the State by escheat. The right of secession therefore, is intransmissible, and were it not, the intestate's release would be a bar. The question susceptible of argument, then, is whether there were such evidence of fraud at the execution of the papers as might be left with a jury."

The Court then discusses the evidence of fraud, and decides that it was insufficient, and that the plaintiff was not entitled to recover.

The case of Buchler *vs.* Gloninger, 2 Watts, 226, cited by the Court in the above opinion, only decided that a conveyance in fraud of creditors was good against the party himself and his heirs, executors or administrators, but was void as to creditors, and might be set aside by the administrator only when acting as trustee, representing the creditors. The syllabus given is as follows:

"The statute of 13 Elizabeth makes void a deed only against creditors, but not against the party himself, his executors or administrators; as against them it remained a good deed. If the action be against the administrators for goods in possession of their intestate at the time of his death, which the plaintiff alleges belong to him, it is competent for the defendants to show that the intestate was insolvent at the time of his death, and that they defend for creditors. The statute will then bar the plaintiff's recovery."

The decision is that the agreements being good against the decedent and his heirs and administrators, the administrator could only recover against the society by showing that there were creditors of the decedent who were defrauded by the agreements.

As the statement of the evidence in the case shows that there were children of Schriber then living, and that the administrator-plaintiff was also a son of Schriber, it is evident that the reference by the Court to an escheat to the State was merely to show what would be the effect of the plaintiff's recovery if there were no heirs, and not for the purpose of stating that Schriber had left no heirs, or deciding the case on that ground.

As the contract, in case of withdrawal of a member, as stated in the agreements of 1805 and 1827, is not to return the property contributed, whether real or personal, but "to refund to him or them the value of his or their property brought in, without interest," the administrator of a deceased member would be the proper party to bring suit for it for the heirs, if it belonged to the estate of the decedent. It was a claim for personal property belonging to the estate, for which only an executor or administrator would be entitled to sue, whether it finally went to creditors or heirs of the decedent. The decision of the court, therefore, was that the property contributed by the deceased member, and all interest he had in the

property of the society upon his death, vested in the society and not in his heirs or administrators. That, although there is no express tontine or survivorship clause in these agreements, that is the effect and intention of the agreements. In 26 Am. and Eng. Encyclopædia of Law, page 58, titled "Tontine Insurance," this is the construction put upon this decision.

If, then, the interests of Christian Strohaker and wife, and Matthias Rief and wife, and Jacob Scheel, whatever they might have been, passed upon their deaths, to the society by survivorship under these agreements, and not to their heirs; such heirs acquired no right or interest in the present property of the society through them.

Another objection to the recovery by the heirs of those persons of the first and second classes is that all rights of action, or for relief in equity that these parties or their heirs might have under the agreements of 1805 and 1827 against the society, accrued prior to 1836, more than sixty years ago. In Spiedel *vs.* Henrici, 120 U. S. R., 377, a bill filed against this same society in 1862, for causes occurring some fifty years before, was dismissed by the Supreme Court of the United States on the ground that the plaintiff had shown so little vigilance and so great laches that he was not entitled to relief in equity; and it was there held that a bill might be dismissed on that ground, although the objection was not raised by the pleadings.

The third class of persons through whom the plaintiffs claim, are those who died members of the society after the making of the agreement of 1836, and who all signed that agreement and that of 1847. These are Christopher and Barbara Schwartz and all their family (except Joel, who never became a member of the society), Andreas Goterwa and Catharina Strohaker.

The agreement of 1836, after reciting the sixth article of the agreement of March 9th, 1827, providing for the refunding to withdrawing members the value of all such property as they may have brought into the society, and the reasons inducing the making of the agreement, proceeds as follows, viz.:

"Now, therefore, be it known by these presents that we, the undersigned, with a view to carry out the great principles of our union, and in consideration of the common benefits to be derived therefrom, do hereby solemnly enter into, covenant and agree with each other as follows:

"1. The said sixth article is entirely annulled and made void as if it had never existed; all others to remain in full force as heretofore.

"2. All property of the society, real, personal or mixed, in law or equity, and howsoever contributed or acquired, shall be deemed

now and forever joint and indivisible stock; each individual is to be considered to have finally and irrevocably parted with all his former contributions, whether in land, goods, money or labor, and the same rule shall apply to all future contributions, whatever they may be.

"3. Should any individual withdraw from the society or depart this life, neither he in the one case, nor his representatives in the other, shall be entitled to demand an account of said contributions, whether in goods, land, money or labor, or to claim anything from the society as matter of right. But it shall be left altogether to the discretion of the superintendent to decide whether any, and if any, what allowance shall be made to such member or his representatives as a donation."

As already stated, this agreement was signed by all those through whom the plaintiffs claim who continued in the society after its adoption, and this includes all of those through whom the plaintiffs claim who are not included in the first two classes. And it clearly and unmistakably establishes the right of survivorship in the society, and is as clearly a grant to the society of all interest and right that each person signing it may have in the common property, to the entire exclusion of their heirs or personal representatives. It has been signed and adopted as a part of their contract with the society by all persons admitted to the society since it was made, in 1836.

This agreement came before this Court for consideration in Nachtrieb *vs.* Harmony Society, No. 28, November term, 1849, in equity, reported in 3 Wallace, Jr., 66, and was held valid and binding on the persons signing it. Nachtrieb, in his bill alleged that he had joined the society in 1819, and had been illegally and wrongfully expelled in 1846; and prayed for an account, and that he should be allowed his share of the property of the society. The case was heard before Judge Grier. The questions raised were whether he had been wrongfully expelled or had voluntarily withdrawn from the society, the evidence of withdrawal being the following paper, signed by Nachtrieb two days after the alleged expulsion, viz.:

"To-day I have withdrawn myself from the Harmony Society, and ceased to be a member thereof. I have also received from George Rapp two hundred dollars as a donation, agreeably to contract.

"JOSHUA NACHTRIEB."

"Harmony, 18th June, 1846."

And if wrongfully expelled, what relief was he entitled to under his bill.

Judge Grier, in an interlocutory opinion, filed in the case and

cited by the plaintiffs, after quoting the agreements, including that of 1836, as being signed by Nachtrieb, says, in commenting on the right of the society to expel a member:

"It will be admitted that for the peace, harmony and safety of the society, any member might have been punished even to expulsion, although no by-laws or written rules existed prescribing the offence; this surely would be far enough; but expulsion without a prescribed offence, written or oral, would be unjust to the expelled member, but would, if without remedy, in connection with other causes, some of frequent occurence, others inherent in such a community, irresistibly lead at no remote day to a dissolution of the society, and *consequently to a division of its immense possessions among such of the members as might happen to survive the operation of these causes.* Unless, however, nature should be proof against the strong temptation to hasten such a result the dissolving element would be always at work. The unwritten rules of the society, inconsistent with natural rights and liberties as seen beyond its owner's limits, the death of its members, the expulsion of others with or without cause, and the prohibition of marriage and the lawful intercoure of the married, would in time so reduce the community in number as to make it expedient and proper in the opinion of the survivors to dissolve and divide the possessions. It is not meant to infer that any such ulterior result is projected, or that in view of it, it in any way influenced the proceedings against the complainant; it is noticed simply for the purpose of glancing at *an indisputable and imputed right which will attach to each member of the community at its dissolution*; an event it may be near or remote, but which not unreasonably, such member may think may happen in his lifetime, and to value accordingly, with its disadvantages if any the privileges of membership."

Having reviewed the evidence in the case, the court decided that Nachtrieb had been unlawfully expelled; that the words "according to contract," in the paper signed by him, had reference to the agreement of 1836, but that the paper of June 18, 1846, taking away his rights, under the circumstances under which it was signed, was not conclusive on him, or such as equity would enforce, and the plaintiff was entitled to receive a share of the property of the society.

In his final opinion, reported in 3 Wallace, Jr., 81, the Court held that "Although, by the contract and agreement of the several members of this association, each had an equal right and interest in their common property, and *had estopped himself from even setting up any claim for property or labor contributed to the common stock in case of a voluntary withdrawal from the society,*" yet, as the society had unlawfully expelled the plaintiff, the contract between him

and the society was broken, and he was entitled to his equal share of the property, viz.: one three hundred and twenty-first part, there being then, including Nachtrieb, three hundred and twenty-one members, and that the paper of withdrawal had been obtained by undue influence, and was void. On appeal to the Supreme Court, reported in 19 Howard, 126, it was held that the instrument of June 18th, 1846, in connection with the agreement of 1836, was not merely a receipt, but a contract, and showed a voluntary withdrawal from the society; that the plaintiff's bill had not been properly framed to admit the evidence to show undue influence, fraud or imposition on the plaintiff, and such evidence could not be considered; that the contract was conclusive on the plaintiff, and that he was not entitled to the relief prayed for. Thus affirming that part of the opinion of the Circuit Court above quoted, viz.: that a member voluntarily withdrawing from the society was estopped by the agreement of 1836 from setting up any claim for money, property or labor contributed.

In Geosele *vs.* Bimeler, 5 McLean R., 223, affirmed in 14 Howard, 590, agreement of the Separatist Society of Zoar, containing provisions in reference to the property of the society and the labor of its members—similar to those of the agreements in this case —was held to be valid and binding on the members and their heirs, and that "all individual right of property became merged in the general right of the association. A member had no individual right, and could transmit none to his heirs." The same agreement came up for consideration before the Supreme Court of Ohio, in Gasely *et al. vs.* Separatist Society of Zoar, 13 Ohio State Reports, 144, and the same conclusions were arrived at.

In Burt *vs.* Oneida Community, 137, N. Y. R., 546, a similar agreement (which will be found in full in 41 New York State Reports, 48) was held by the Court of Appeals of New York, not to be "prohibited by any statute, or in contravention of any law regulating the possession, ownership or tenure of property," and that "it was a joint holding of property by the adult members of the community, with this qualification, that upon the death or withdrawal of a member, no share or interest therein passed to him or to his personal representatives, but they who survived or remained continued to hold jointly the entire property *insolidum*."

Waite *vs.* Morrill, 4 Marine R., 102, and Gass *vs.* Walhite, 2 Dana (Ky.), 170, and Grosvenor *vs.* United Society of Believers, 108 Mass., 78, are all cases arising on similar agreements and are to the same effect.

The plaintiffs, therefore, under their agreements, have no claim on the property of the society through any of their ancestors. Not

through those who withdrew before the execution of the agreement of October 31st, 1836, because those who withdrew had had returned to them the value of any property they might have contributed, and had received the compensation for their interest or part in the society or its property. Not through those who died in the society before 1836, because all their interest in the property had become vested in the society, and did not descend to their heirs. And not through those who died in, or withdrew from the society after the agreement of 1836, because they had by that agreement expressly renounced for themselves and their heirs all right to claim anything on their withdrawal or death. In all the cases cited above, the principle of survivorship in the remaining or surviving members was recognized as existing, and approved and enforced.

The plaintiffs, in the sixth paragraph of their bill, aver that the money and real estate from those who became members of the society were received and accepted by George Rapp and his successors in trust, and for the furtherance of the tenets and beliefs upon which the society was founded. This last clause is denied by the defendants in the sixth paragraph of their answer, but it is there admitted that all the goods and properties placed in the names of the agents and trustees of the society were and are held in trust for the Harmony Society, but always subject to the terms of the written contracts between the members of the said society. But in the twenty-sixth paragraph of the bill the plaintiffs deny that the property of the society has ever been impressed with a trust, as being contrary to public policy and void in law or equity.

It is difficult to determine from these contradictory averments of the plaintiffs what their position on the question is. There is no other evidence in the case to show how the property was or is held than the agreements of the members in evidence hereinbefore set forth, and the subsequent agreements of April 30th, 1890, and December, 1892, also in evidence—in which the former agreements are affirmed and continued—and the testimony of all the witnesses who testified on the subject, that all the property was held by the trustees in trust for the society as joint property.

The counsel for the plaintiffs however, claim in their argument, that the grants in the agreements of 1805 and 1827, if they were to the society were to an unincorporated association which was incapable of taking, and therefore void; that if George Rapp be considered a trustee they were still void, for the reason that a grant to a trustee of an unincorporated voluntary association is void, and that they violate the rule against perpetuities; and also for the further reason that the associates of George Rapp were not named and could not be ascertained.

The first article of the agreement of 1805 is as follows:

"We, the subscribers, on our part and on the part of our heirs and descendants, deliver up, renounce and remit all our estate and property, consisting of cash, land and chattels, or whatever it may be, to George Rapp and his associates in Harmony, Butler County, Pennsylvania, as a free gift or donation, for the benefit and use of the community there, and bind ourselves on our part, as well as on the part of our heirs and descendants, to make free renunciation thereof, and to leave the same at the disposal of the superintendents of the community as if we never had nor possessed it."

And the first paragraph of the agreement of 1827 is as follows:

"We, the undersigned, for ourselves, our heirs, executors and administrators, do hereby give, grant and forever convey to the said George Rapp and his associates, and their heirs and assigns, all our property, real, personal and mixed, whether it be lands and tenements, goods and chattels, money or debts due to us, jointly or severally, in possession, remainder, or in reversion or expectancy, whatsoever and wheresoever, without evasion, qualification or reserve, as a free gift or donation for the benefit and use of said association or community; and we do bind ourselves, our heirs, executors and administrators to do all such acts as may be necessary to vest a perfect title to the same in the said association, and to place the said property at the full disposal of the superintendents of said community without delay."

The objection that the associates of George Rapp were not named or known, is not good. He is named and known, and capable of taking and holding the title, either for himself or in trust.

The agreement itself shows that by "his associates" those who joined in the agreement were intended; and although through the loss of the agreement, their names are not now known, they were known at the time of its execution and for many years after.

Who the associates were, and that they were the persons who, by joining in the agreements, became associates of George Rapp and members of the society, is shown by Exhibit No. 86, being the deed from Frederick Rapp for himself as attorney in fact of George Rapp and his associates, to Abraham Zeigler of Lehigh County, for the lands of the society in Butler County. This deed was offered in evidence by the defendants, for the purpose of showing who the members of the society were, and as part of its history. (See testimony, pages 2622 and 2792). The parties to this deed are stated in it, as follows:

"This indenture, made the sixth day of May, in the year of our Lord, one thousand eight hundred and fifteen, between Frederick

Rapp of Harmony, County of Butler, and Commonwealth of Pennsylvania, for himself and as agent and attorney in fact for George Rapp and associates, of Harmony aforesaid, for the purpose specially constituted and appointed by letters of attorney bearing date on the fourteenth day of June, in the year of our Lord one thousand eight hundred and fourteen, duly signed, sealed and acknowledged by the said George Rapp and Christina his wife, Rosina Rapp, Johanna Rapp, John L. Baker, William Liller"—and four hundred and fourteen others, naming them—"*being the associates of the said George Rapp above mentioned*, of the first part, and Abraham Zeigler, of Lehigh County, in the Commonwealth aforesaid, of the second part, witnesseth," etc.

Among those named in this deed as associates of Rapp and signers of the power of attorney, appear the names of several of those persons through whom some of the plaintiffs claim.

The objection that these grants violate the rule as to perpetuities is also unfounded. A perpetuity is defined by Swayne, Justice, in Auld *vs.* Washington Hospital, 95, U. S. R., 312, as

"A limitation of property which renders it inalienable beyond the period allowed by law. That period is a life or lives in being and twenty-one years more, with a fraction of a year added for the term of gestation in posthumous births."

And in Perry on Trusts, Sec. 377, it is said:

"A perpetuity is a future limitation, whether executory or by way of remainder, and of either real or personal property, which is not to vest until after the expiration of, or will not vest within the period prescribed by law for the creation of future estates and interests, and which is not destructible by the persons for the time being entitled to the property subject to the future limitations, except with the concurrence of the individual interested in that limitation. If such person is not yet in being, as he may not be after an extended period, of course the estate cannot be conveyed, even if all the world should join in the deed."

There is nothing in these grants to create a perpetuity. They are absolute grants, in fee simple, to take effect immediately for the use and benefit of the association generally, not for any particular purpose, but for any use they may see fit to make of it. There is no future estate sought to be created or limited, and no provision restraining alienation. It is true the property may be held indefinitely by the trustees or the society, as any property held in fee simple; but if it should be to the interest or advantage of the society to part with it, there is nothing in these grants to prevent the conveyance, or that would require that any third party should consent to or join in the deed.

In Geosele *vs.* Bimler, 14 Howard, 590, the Court had under consideration the articles of association of the Separatist Society of Zoar, which were similar to the agreements in this case. In delivering the opinion of the Court, McLean, J., on page 608, says:

"Do the articles constitute a perpetuity? We all think they do not. They provide for the continuance of the society for an indefinite period of time, in the exercise of the discretion of the members. The majority of the members may require a sale of the property and break up the association. In fact the majority governs by the election of its officers. Members may be expelled from the society and new one admitted under established rules. Whilst the society has the means of perpetuating its existence, it may be said to depend for its continuance on the will of a majority of its members."

The other claim of the plaintiffs is, that if the grants were directly to the society, they were to an unincorporated association, incapable of taking, and therefore void; and if they went to Rapp in trust for the society, they were equally void for the same reason.

These grants are of both personal and real property, and there can be no doubt that unincorporated societies or associations are capable of taking, directly, and holding personal property in the name of the association. It is done every day, and their right is not questioned. The rule applies only to real estate. All the cases cited by the plaintiffs to show that a grant to an unincorporated society is void, are cases of grants of land or rights in land only, made directly to an unincorporated body; not to trustees for it.

Voluntary associations may be *cestuis que* trust of personal property.

Perry on Trusts, Sec. 63.

But, although a voluntary, unincorporated association cannot take title to real property in their society name, as they are not in law recognized as persons, it may be held for their use and benefit by trustees, and their right to the enjoyment of the property be secured in that way.

Liggett *vs.* Ludd, 19 Oregon, 89.
Second Congregational Society *vs.* Waring, 24 Pick., 304.
Theological Seminary *vs.* Childs, 4 Paige, 423.
Byam *vs.* Beckford, 140 Mass., 31.
Crawford *vs.* Gross, 140 Pa. St., 297.

In Second Congregational Society *vs.* Waring, 24 Pick., 304, one Packard had conveyed certain land to himself, Haward, and twenty-five others, "who have associated together and have entered

into a contract as proprietors for the purpose of building and erecting on said lot a meeting-house for public worship," "to have and to hold said lot to said proprietors and their heirs and assigns, and to each and every person who may hereafter become the lawful owner and proprietor of a pew in said house to be built and erected thereon, and which may and shall be afterwards rebuilt thereon by said proprietors and their successors, to the use and behoof of said proprietors for said purpose, and of each and every lawful owner and proprietor of a pew or pews in the meeting-house to be built and rebuilt on said lot forever."

In their opinion the Court say:

"We are all satisfied that the deed of the *locus in quo* from Packard to Haward and others, operated to convey the premises to them for the use of the proprietors therein named and of each and every lawful owner and proprietor of a pew or pews in the meeting-house to be built and rebuilt on said lot forever. It is no valid objection that the use was shifting. The grantees, who were capable to take did take, upon the execution of the deed to them, and the use would legally shift to those who should afterwards become pew-holders. Multon's case Moor, 96, Pl. 240: Where A makes a feoffment to B to the use of B and his wife that shall be, and B afterwards marries; there the use vested in B at first, but upon the marriage shifted to himself and wife."

"It is no valid objection that the limitation of the use was to depend upon the contingency, that the *cestui que use* should become a pew-holder. When that event happened the use shifted to him and others who held the estate before; and those who so held pews were tenants in common. Sanders on Uses, 131."

The following cases, cited by the plaintiffs, do not support their position:

In Sanderson *vs.* White, 18 Pickering, 328, the question was as to who were visitors of a charitable trust created by will.

Hemlock *vs.* Westbrook, 9 Johnson, 73, was an action of trespass for cutting wood. The defense was proviso in plaintiff's deed, "that the inhabitants of Rochester should be allowed to cut and carry away wood." The Court held that as the inhabitants of Rochester were not incorporated, and incompetent to take an estate by that name, the reservation to them in a deed to a third person was void.

Jackson *vs.* Corry, 8 Johnson, 385, was an ejectment in which the defendants claimed, under a deed to "the people of the County of Otsego." The Court said, "The people of the County of Otsego had not a capacity to take by grant. They were not a corporate body known in the law * * ." A grant to be valid must be to

a corporation, or some person certain must be named who can take by force of the grant, and can hold either in his own name *or as trustee*.

Perkins, Sec. 55, 2 Johns., Cases 324.

In Sloane *vs.* McConaghy, 4 Ohio R., 157, it was held that a bond to the commissioners of the county, no commissioners being elected when it was made, was void.

Briggs *vs.* Mansfield, 10 Pick., 363, was a claim of a right of pasturage, in which it was held that a grant of right of common to the inhabitants for the time being (not incorporated), of a certain territory, conveyed no right to persons not inhabitants at the time of the grant.

German Land Association *vs.* Scholler, 4 Minn., 331, does not decide that lands could not be held in trust for an unincorporated association, but only that the declaration of the trust in that case was too vague and indefinite under the Minnesota Act in relation to trusts, and was therefore void.

It was a complaint to compel the execution of a deed. Defendant being the equitable owner of lands, the legal title to which was in the United States, executed a conveyance of the land to Albert Tofel and others named, who were trustees of the association, in trust for the German Land Association (which was not incorporated, and for the several use and benefit of the several members thereof, according to their respective interests, as the same might thereafter be determined by division or otherwise. Defendant had afterwards obtained the legal title and refused to convey.

It was a proceeding to compel a third party to carry a trust into execution, or rather to create a trust, not to declare void and set aside a trust that had been recognized, in operation, and acted upon, for many years.

In its opinion the Court says:

"One question in the case is whether the beneficiaries are sufficiently described to enable the Court to execute the trust. Irrespective of the provisions of our statutes, it would seem that the trust could not be sustained. Courts of equity carry trusts into effect only when they are of a certain and definite character. If, therefore, a trust is clearly created in a party, but the terms by which it is created are so vague and indefinite that Courts of Equity cannot clearly ascertain the objects of the persons who are to take them, the trust will be held entirely to fail. 2 Story, Eq. Juris, 969, a. Wheeler *vs.* Smith, 9 How., U. S. R., 55."

"In declaration of uses certainty was required, and that especially in three things: in the persons to whom, in the lands, etc., of which, and in the estates by which the uses were declared; and

if there was a want of certainty in either of these the declaration was not good, and a trust is now merely what a use was before the statute of uses."

"Our statutory provision removes any doubt that might otherwise be supposed to exist. In the creation of a trust of this character, it is required that the trust shall be fully expressed and clearly defined on the face of the instrument creating it." * * * "The German Land Association was not by law invested with any legal existence, and the trust deed gives no intimation as to who the persons were associated under that name. The deed was therefore void."

In the present case, the objects of the trust are set forth in the agreements, and the beneficiary is the community or society formed by the agreement, and composed of the persons joining in and signing the agreement. The conclusion of the agreement of 1827 is, "In witness whereof and in testimony that the undersigned have become members of the said community upon the conditions aforesaid, they have hereunto set their hands and seals." This trust would, therefore, be valid under the above decision, as all that is required in the opinion is shown in the agreement creating the trust.

But if the agreements of 1805, 1827 and 1847 were void as creating a perpetuity, or on account of the grantees being incompetent to take—being Rapp and his associates, the associates being unknown; or on account of the association being unincorporated and therefore incompetent to take; or on account of the trust sought to be created by the deed being void as in favor of an unincorporated society incompetent to take, and for that reason no title to the property sought to be conveyed passed to the grantees—or the property reverted to their grantors or their heirs—then the plaintiffs can have no claim to it at this time. If the grants are void now, they were void at the time they were made, and the title of the property and the right to its possession either remained in the grantors or immediately reverted to them, and their right of action occurred for the recovery of it. But the last of these agreements was signed by the ancestors of the plaintiffs more than fifty years ago, and if any property was contributed by them, it was contributed at that time, and possession then taken and since held by the trustees or the society as the joint property of the society, that is, adversely to the plaintiffs; and, under the decision of Spiedel *vs.* Henrici, 120 U. S. R., 377, the plaintiffs and their ancestors have, through their laches and the lapse of time, lost all rights or interest they might have had in the property on these grounds. The question whether the grants and the trust were valid or not, therefore, is immaterial in this case. If the plaintiffs have any interest in the property of

the society, it can only be through these agreements and the trust thereby created.

But again. It is alleged in the second paragraph of the bill that the three thousand acres of land of the society, at Economy, Beaver County, were *purchased* by it in 1825; and it appears from the evidence that the lands at Beaver Falls were also *purchased*. None of the deeds for any of the lands held by the society were in evidence, nor was it shown from whom any of it was purchased; but it was shown that the legal title of all the lands acquired by the association since its organization was held during the life of George Rapp, either by him or by Frederick Rapp, in trust for the society, and after his death by the several trustees upon the same trust. If these lands had been conveyed to the society by any of the ancestors of the plaintiffs, or by any other member of the society, it is to be presumed that the plaintiffs would have shown that fact as a part of their case, to entitle them to the reversion or resulting trust claimed by them. The burden was on them. It is to be presumed that the deeds are on record, or at least there must be some evidence of title in the trustees which might have been produced. Not having shown or attempted to show that the title of these lands was derived from any of the persons through whom the plaintiffs claim, or from any other member of the society, and it appearing that they had been purchased, it must be concluded that they were purchased from some person not a member of the society. If this is the case, and it was conveyed to George Rapp or Frederick Rapp, in trust for the society, and that trust was void for the reasons alleged by the plaintiffs, how are they entitled to any interest in it? If the trust was void, either the title would not pass out of the grantors or it would go to the grantee clear of the trust. The claim that the trust was void proves too much for the plaintiff's case. If they have any interest in property purchased with money of the society, it can only be through the trust—not in opposition to it.

The plaintiffs claim that upon the dissolution of the society the purposes for which the property was contributed to the association have entirely ceased and failed, and the property must revert to the grantors of their heirs, on the ground that the grants of the property contained in the agreements created a limit or base fee only in the property, or a resulting trust to the grantors or their heirs.

The grants are contained in the agreements of 1805 and 1827, which are substantially the same, and are agreements for the formation of an association or community; the only difference being that the agreement of 1827 is more fully expressed. The granting clause is contained in the first article, and, as translated from the

original German by Mr. Fleischman—who was agreed upon by the parties for that purpose—is as follows:

"ARTICLE 1. We, the undersigned, for ourselves, our heirs, executors and administrators, do hereby give, grant and forever convey to the said George Rapp and his associates and to their heirs and assigns all our property, real, personal and mixed, whether it be lands and tenements, goods and chattels, money or investments due to us, jointly and severally, in possession or in remainder, or in expectancy, whatsoever and wheresoever without exception, evasion or reserve, as a free gift of donation for the benefit and use of said association or community, and we do hereby bind ourselves, our heirs, executors and administrators to do and perform all that may be necessary to vest a perfect right and title to the same in the said association, and to place the said property at the full disposal of the superintendent of the said community without delay."

In the second and third articles the subscribers covenant and agree that they and their families will labor for the benefit of the community, and will make no claims for compensation for the same.

This does not create a limited or a base fee. The property is not granted for any particular purpose, or to be used in any specified manner, or for any special object, but generally "for the benefit and use of the said association or community, and is to be placed at the *full disposal* of the superintendent of the community." In the agreement of 1805 it is written: "and to leave the same at the disposal of the superintendents of the community, as if we never had nor possessed it." This is said of personal as well as real estate; of money as well as lands; of property that would necessarily be destayed or parted with in any use made of it, as well as real estate, and the terms used are applied to both. There is no restriction on the use of either, but both are to be at the full disposal of the superintendent. This would include the power of sale. It could be used in any manner that would be beneficial to the society. If it would be to the advantage of the community to sell it, it might be sold.

Wherever words in a conveyance are relied upon as creating a condition subsequent, so as to create a base or determinable fee, they must not only be such as would of themselves create a condition, but must be so connected with the grant as to qualify or restrain it. To make the estate conditional the words must clearly show such intent.

Methodist Church *vs.* Old Columbia Ground, 103 Pa. St., 608.

A conveyance reciting that the property is to be used for a certain purpose, without more, does not create a condition or base fee.

Wilkesbarre *vs.* Wyoming Society, 134 Pa. St., 616.

Harris *vs.* Shaw, 13, Ill., 456.
Cook *vs.* Trimble, 9 Watts, 15.
Kerlin *vs.* Campbell, 15 Pa., 500.
Seebold *vs.* Shitler, 34 Pa., 133.
Seller's Church Petition, 139 Pa. St., 61.

The plaintiffs, in support of their position that a conditional or base fee was created in this case, have cited the following cases, viz.: Scheetz *vs.* Fitzwater, 5 Pa. St., 126; Kirk *vs.* King, 3 Pa. St., 436; Vail *vs.* Long Island, 106 N. Y. 283; Adams *vs.* Logan County, 11 Ill., 336; Universalist Society *vs.* Boland, 155 Mass., 171; Church *vs.* Manning, 72 Md., 116; Easterbrook *vs.* Tillinghast, 5 Gray, 17; Board *vs.* Edson, 18 Ohio, 226; Gebhart *vs.* Reeves, 75 Ill., 301; Reed *vs.* Stauffer, 56 Md., 236; Carmack *vs.* Grimshaw, and Slegel *vs.* Lauer, 147 Pa., 236.

In all these cases except Slegel *vs.* Lauer the limitation of the estate was clearly expressed, showing the intention to convey a base or qualified fee only, and that upon the termination of the specified particular use, the property should return to the grantor. The property was conveyed for a specified purpose and *for no other use*, or *for no other use whatever*, or was granted *for so long as used* for the purpose specified, or to be *used solely* for the specified purpose.

In Carmack *vs.* Edwards, 13 Reports Chy., 334, much relied on by the plaintiffs, a society was formed for the purpose of raising, by subscription of members and by fines and forfeitures, a fund for the relief of deceased members of the society. Rules were adopted, providing for the management of the society. Rule 16 provided that the money arising from the subscriptions, fines, forfeitures and otherwise, should be invested by trustees in the manner therein provided. Rule 35 provided for the payment of annuities to widows of deceased members. Rule 45 provided that all fines and forfeitures should form part of the funds, and should be *applied solely* for the purpose provided by the rules, and towards defraying the expenses of the management of the society. The last surviving ordinary member, T. H. Edwards, died in 1878; the last person entitled to an annuity died in 1892. The fund then belonging to the society was 1,246 pounds sterling. This was claimed by the Crown as *bona vacantia*, by the representatives of Edwards as last surviving member, by S. Clark for the representative of the other members of the society.

Chitty, J., in his opinion, says:

"When a man provides a fund by way of a trust for the payment of a specified annuity to his widow during her life, and makes no

further declaration of trust affecting the fund, the beneficial interest in the fund, or so much of it as is not required for the payment of the annuity, results to himself. The same doctrine would apply to several persons agreeing to provide such annuities for their widows; there would be an ultimate trust in their favor when the purposes of the fund had come to an end. Nor can I see how any difference could justly be made by reason of their raising by common agreement such a fund in different but prescribed proportions among themselves." And he held that the doctrine of resulting trust applied, and that the fund should be distributed among the representatives of the ordinary members in proportion to the amounts contributed by each member to the funds of the society.

In Slegel *vs.* Lauer, 148, Pa. St., 236, a strip of land adjoining a county jail was conveyed to the county, reserving to the grantor and his heirs the free use of the property for an open yard or garden—habendum "to and the use, interest and purpose following, that is to say, to be and remain forever hereafter unbuilt on, in order to prevent any prisoner or prisoners making their escape over the said prison walls by reason or means of any building erected contiguous to said walls." The jail had been removed to another place. The Court, in the opinion, says:

"In view of all the circumstances there seems to arise from the express declaration of purpose a necessary implication of the exclusion of every other. It is a rule in the construction of a statute, pleading, contract or will, or other instrument, that what is clearly implied is as much a part of it as what is expressed. U. S. *vs.* Babbitt, 1 Black, 61, Hanchett *vs.* Weber, 17 Ill. App., 114. The instrument under consideration is therefore to be treated precisely as if it contained a declaration that the grant was for the purpose mentioned *and no other.* But when an estate is conveyed in fee for a specified purpose 'and no other,' the fee is a base fee, determinable upon the cessation of the use of the property for that purpose. Kirk *vs.* King, 3 Pa. St., 436. Scheetz *vs.* Fitzwater, 5, Pa. St., 126."

Nor is there any resulting trust created by the grants:

"If a conveyance has been made upon a valuable consideration, there can be no resulting trust to the grantor, as the payment of a valuable consideration imports an intention to benefit the grantee in case the trusts declared fail, or are imperfectly declared, or do not take effect for any other reason."

Perry on Trusts, Sec. 151.

Although these grants and covenants are called in the agreements, gifts or donations, they are not without a consideration and

a very valuable one. In consideration of them, the donors become members of the community, thus partaking in the benefits derived from the property contributed, and they and their families are to be supported and provided for by the community during life, if they so long remain in it, as well during sickness or inability to labor as in health; or, if they die or leave the society, leaving a family, it is to be supported and cared for as long as it remains in the community.

The fourth and fifth articles set forth the considerations to be received by the donors, and are as follows:

"ARTICLE 4. In consideration of these presents the said George Rapp and his associates do, by these presents, receive the undersigned jointly and severally as members of this community, whereby each of them is entitled to attend all religious meetings, and to receive not only for themselves, but also for their children and families, all such instruction as may be required for their temporal good and their eternal welfare.

"ARTICLE 5. The said George Rapp and *this community* further promise each of the undersigned and their families to provide them with all the necessaries of life, as clothing, food, drink and lodging, etc., for themselves and their families. And this promise is not limited to their days of health and strength, but when any of them shall become sick, infirm or otherwise unfit for labor, the same support and maintenance shall be provided as before, together with such medicines, aid, care and attendance and consolation as their condition may reasonably require. And if at any time after they have become members of the association, the father or mother of a family should die, or should otherwise be separated from the community, leaving their family behind, such a family shall not be left as orphans nor destitute, but shall be entitled to the same rights and maintenance as before, as long as they remain in the association, in sickness as in health, and to such extent as their circumstances may require."

It is not alleged by the plaintiffs in their bill, or at the hearing, that the community had ever failed to fulfill its part of the contract towards any of their ancestors or persons through whom they claim, and it must, therefore, be taken for granted that it has not failed to do so, and that the parties through whom the plaintiffs claim have received the whole of the consideration contracted for in the agreements. And the plaintiffs can have no equitable or other claim to have a resulting trust in the property contributed.

"There could be no resulting trust, for every part and parcel of the grantor's estate, legal and equitable, present or prospective, had passed from him and *was paid for*. Nor was the estate granted

a base fee. It was unincumbered with conditions or limitations. The ancestor received a full consideration for it, and the plaintiffs cannot rescind the bargain."

Kerlin *vs.* Campbell, 15 Pa., 500.

The grant in the present case, in the agreement of 1805 is, "As if we never had nor possessed it"; and in the agreement of 1827, "All our property, real, personal and mixed, * * * without evasion, qualification or reserve, * * * and to place the said property at the full disposal of the superintendents of said community without delay."

It is evident from these expressions that there was no intention to create a base fee or a resulting trust. And deeds are to be construed most strongly against the grantor.

But in this case there is another reason why there can be no resulting trust or reversion in the plaintiffs. The ancestors of the plaintiffs never contributed any property to the society or to Rapp, in trust for it; and for their labor they received the consideration agreed upon and released all further claim on account of it. The plaintiffs can have no reversion or resulting trust in the property contributed by others than their ancestors. There is no such provision in the agreements.

The master, for these reasons finds that none of the plaintiffs have any interest whatever in the property of the society, and are not entitled to any part or share in it upon the dissolution of the society, or to intermeddle in the affairs of the society, or to an account, as prayed for in the bill.

The remaining question, submitted to the master under the agreement of counsel and the opinion of the Court, hereinbefore quoted, is:

"Has the Harmony Society been dissolved either by the common consent of its members or by the abandonment of the purposes for which it was founded?"

On this question the master, in addition to the facts hereinbefore found and stated, finds from the evidence the following principal facts in the history of the association:

By the fourth article of the agreement of August 12th, 1847 (hereinbefore quoted, page 31), Romulus L. Baker and Jacob Henrici were appointed the first Board of Trustees of the Harmony Society.

From their appointment by that agreement, Romulus L. Baker and Jacob Henrici exercised the powers and performed the duties of Senior and Junior Trustees, until the death of Baker in 1868, when Jacob Henrici became Senior Trustee and Jonathan Lenz Junior Trustee.

On July 28, 1888, John S. Duss, who, prior to that time, had been living on a stock farm which he had purchased in Nebraska, came to Economy at the request of Mr. Henrici, Senior Trustee, to take charge of the school there, and was employed by the Board of Elders as school teacher.

In the early part of January, 1890, at the request or suggestion of Mr. Henrici and Mr. Lenz, he and Herman Fischern, a former teacher at Economy, consented to join the association. On January 2nd, 1890, George Kirschbaum, one of the Board of Elders, was killed by an explosion of natural gas; a short time afterwards John Wirth, another member of the Board of Elders, died of paralysis, and on January 22nd, 1890, Jonathan Lenz, Junior Trustee and member of the Board, died suddenly. On January 24th, 1890, John S. Duss, Herman Fischern and Jacob Nicklaus were admitted by the Board of Elders as members of the society, and signed the articles of association, and were afterwards elected by the remaining members of the Board as members of the Board of Elders, to fill the vacancies caused by the death of the members above mentioned. Ernest Woelful was then elected by the Board, Junior Trustee, as successor of Jonathan Lenz, deceased. There was no opposition to or protest against the election of the three new members, either to membership in the association or as members of the Board of Elders, as alleged in the bill.

On April 30th, 1890, during the trusteeship of Henrici and Woelfel, an agreement, Exhibit No. 19, approving, reaffirming and continuing the agreement of August 12th, 1847, and the agreements mentioned in it, and ratifying and confirming all the acts of the Board of Trustees from August 12th, 1847, to the date of the agreement, was signed and acknowledged by all the then members of the Harmony Society, numbering forty-five persons. This agreement was recorded on July 31, 1890, in Beaver County. A copy of it is attached to the answer of Riethmueller *et al.*, as "Exhibit F." It is as follows:

"WHEREAS, After the death of George Rapp, the founder and leader of the Harmony Society, to wit: On the 12th day of August, A. D. 1847. All the then members of the said society, by articles and a compact in writing of that date, duly executed at Economy, in the County of Beaver, State of Pennsylvania, in the presence of William F. Baum, Francis Le Goulan, and Andrew Bimber, and subsequently recorded in the office for recording deeds, in and for the County of Beaver, in Deed Book, vol. 25, page 121, etc., adopted and established a system and plan for the regulation and government of the society, the management of their internal temporal affairs, as also for the management and transaction of their ex-

ternal affairs, and business in and by which articles John Schnabel, ternal affairs and business, in and by which articles John Schnabel, John Eberly, Romulus L. Baker, Jacob Henrici and Jonathan Lenz were appointed and constituted the first Board of Elders therein established; and Romulus L. Baker and Jacob Henrici, two members of the society and of the Board of Elders, aforesaid, were therein appointed and constituted the members of the Board of Trustees of said society, provided for and established, which Board of Elders as thus constituted, and their successors, duly appointed, under the authority and in the manner therein granted and provided, have managed the internal temporal affairs of the society as therein directed until the present time, the present Board of Elders being constituted and consisting of Jacob Henrici, Ernest Woelfel, Michael Stiab, Johannes Scheid, Moritz J. Fredericka, Gottlieb Laupp, J. Jacob Nicklaus, Herman Fischern and John S. Duss, and Romulus L. Baker and Jacob Henrici, the trustees aforesaid, and their successors, were and by said articles authorized and empowered, jointly and severally in their own names, or that of either of them, to make all contracts, purchase and sell, invest the funds of the society, collect debts, receive and pay monies, compromise and settle claims and disputes, appoint and discharge attorneys in fact and at law, institute and conduct legal proceedings and generally to manage and transact all the external business and affairs of the society, to make donations to withdrawing members and for charitable purposes, etc. Also jointly in their own names, to grant, bargain, sell and convey all or any of the lands, tenements and real estate then or thereafter owned or belonging to the society, and for this purpose to execute deeds of conveyance in fee simple or otherwise, in their joint names, etc., as by reference to said articles recorded as aforesaid will more fully appear;

"And Whereas, Romulus L. Baker and Jacob Henrici accepted said trust, acted as trustees of said Harmony Society, managing and transacting their business and affairs under the authority aforesaid, until the death of the said Romulus L. Baker, on the 11th day of January, 1868, whereupon in pursuance of the authority conferred by and according to the terms and provisions of said articles recorded as aforesaid, Jonathan Lenz, a member of said society and of the Board of Elders aforesaid, was duly appointed and constituted a member of the Board of Trustees, to fill the vacancy occasioned by the death of said Romulus L. Baker, and thereafter the external business and affairs thereof were managed and conducted and transacted by the said Jacob Henrici and Jonathan Lenz as trustees, the same being managed, conducted and transacted under and in accordance with the authority given and conferred by the

articles aforesaid until the death of said Jonathan Lenz, on the 21st day of January, 1890; whereupon the Board of Elders, consisting of the members last hereinbefore named and mentioned as constituting said Board, in pursuance of the authority and direction of the articles aforesaid, appointed and constituted Ernest Woelfel (also a member of said society and of said Board of Elders) a trustee, to fill the vacancy thus occasioned in the said Board of Trustees, and the said Jacob Henrici and Ernest Woelfel have since that time conducted and transacted the business affairs of the society according to the terms and provisions of the articles aforesaid;

"And Whereas, More than forty years have elapsed since the execution of the articles and compact aforesaid, adopting and establishing the system and plan for the regulation of the government of the internal affairs of the society, and the management, control and transaction of the external business and affairs thereof, and many changes have taken place in the membership of the society, most of the then members having since died, and others embracing part of the undersigned, having been admitted and become members thereof in accordance with the terms and provisions of said articles, all of the members of the Board of Elders, except said Jacob Henrici, designated and appointed in the said articles, having died, as also their successors in said Board, and all of whom as members of said Board, managed the internal affairs of the society as above recited, and two of those who have been members of the Board of Trustees, and actively engaged in the management and transaction of the external business of the society, under the authority as trustees, or jointly with their co-trustee, Jacob Henrici, still surviving and in their joint names as such trustees, making contracts, purchasing and selling personal property, investing, collecting, receiving and paying moneys of the society, settling claims, purchasing real estate, selling real estate of the society, executing and delivering deeds, assignments, transfers and releases, and generally controlling, managing and transacting all the external business and affairs of the society, have also since died;

"And Whereas, Said society and the undersigned, the present members thereof, have received and enjoyed, and do now enjoy the benefits and advantages resulting from the management and regulation of the internal affairs thereof by the Board of Elders as aforesaid, as also the benefits and profit of the external business and affairs thereof, managed and transacted by those who constituted the Board of Trustees as aforesaid, and it is deemed right and proper that we, the undersigned surviving members of the society, who entered into the articles and compact aforesaid, and the others

who have since become members as aforesaid, should recognize, approve and reaffirm said articles, and approve and confirm what has been done for and on behalf of the society, under and in pursuance thereof;

"NOW, THEREFORE, Be it known to whom it may concern, that we, the undersigned, the surviving and present members of the Harmony Society, at Economy, aforesaid, and all the present members of said society, do severally, and each for himself, covenant, grant and agree to and with the others, and each and all the other members aforesaid, and signers hereof and with those who shall hereafter become members as follows, that is to say:

"1st. We do hereby solemnly recognize, approve, reaffirm and continue the articles of agreement and compact of our association entered into at Economy, on the 12th day of August, 1847, and recorded in the recorder's office of Beaver County, as set forth in the preamble hereto, and declare the same to be in full force as a whole, and all parts thereof, including the agreements and compacts mentioned and designated in the first article thereof, as fully and to the same extent as said mentioned agreements were recognized and established by said first article.

"2nd. We do hereby approve and confirm any and all acts, matters and things done and transacted by the Board of Elders of the Harmony Society, as the same was from time to time constituted, since the date of the articles aforesaid, establishing said Board, and we hereby ratify and confirm the appointment of the present Board of Elders, to wit: Jacob Henrici, Ernest Woelfel, Michael Staib, Johannes Scheid, Moritz Fredericks, Gottfried Laupp, J. Jacob Nicklaus, Herman Fischern and John S. Duss.

"3rd. We do also hereby approve, ratify and confirm all acts, matters and things done, transacted and performed by the Board of Trustees of the Harmony Society, constituted first, of Romulus L. Baker and Jacob Henrici, until January 11th, 1868; afterwards, and from that date until January 21st, 1890, of Jacob Henrici and Jonathan Lenz, and since the last-mentioned date, of Jacob Henrici, Ernest Woelfel, hereby ratifying, confirming, holding, declaring as good and effectual in law and in equity, all acts, matters and things done, transacted and performed by each and all of said trustees in the purchase and sale of personal property, and in the making of contracts, investment of funds, purchase, sale and transfer of stocks, bonds and other securities, loaning or borrowing money, collection and payment of moneys, settlement or compromise of claims or disputes, in the institution and prosecution of legal proceedings, in the employment and discharge of attorneys in fact and at law, in the making of donations, in the purchase of real estate,

and in the sale thereof, in the execution and delivery of deeds, conveyances, transfers and assignments, whether of and pertaining to real or personal estate, in the execution or delivery of notes or obligations of any kind, and generally all acts heretofore done by said trustees, in the conducting, managing and transacting of the business of the society, and whether done by said trustees or either of them, severally and in his own name as trustee, or jointly in the joint names of himself and his co-trustee.

"4th. We do also hereby approve and confirm the acts of the Board of Elders in the appointment of Ernest Woelfel, as co-trustee with Jacob Henrici, and declare said Jacob Henrici and Ernest Woelfel, the present Board of Trustees, authorized and empowered to do, perform and transact any business of the society, and to the full extent of the powers and authorities mentioned and designated in and conferred on the Board of Trustees, in and by the articles hereinbefore mentioned, made and entered into August 12th, 1847, and recorded as aforesaid.

"In witness whereof we have hereunto set our hands and seals this 13th day of April, A. D. 1890."

(Signatures.)

(Acknowledgement.)

Ernest Woelfel, Junior Trustee, died on July 26, 1890, and on July 28, 1890, John S. Duss was elected Junior Trustee in his place, and Conrad Hermansdoerfer was elected a member of the Board of Elders to fill the vacancy caused by the death of Ernest Woelfel. At this election Henry Feucht's name was suggested by Mr. Henrici for member of the Board, but was protested against by the other members, except Mr. Duss, on the ground that he was continually stirring up trouble in the society. Mr. Duss, though present, took no part in this election, and did not vote for either trustee or elder.

From the earliest times of which there is evidence in this case, the Harmony Society, in addition to its farming at Economy, carried on very extensively manufacturing of various kinds, both at Economy and elsewhere, and was also interested and engaged in many other industries and businesses, through which it accumulated a large amount of property of various kinds, and also incurred large liabilities. These industries and liabilities will be referred to hereafter.

For a long time prior to the election of John S. Duss as Junior Trustee, the Senior Trustee, Mr. Henrici, had had charge of the finances of the society, and the Junior Trustee had looked after the farming and internal operations of the society, and when John S. Duss was elected Junior Trustee, on July 28th, 1890, he had no knowledge of the finances of the society nor of what its property

consisted; but after some time, through notices from banks of notes of the society falling due, and in other ways, he learned that the society was indebted, and about December 1, 1891, he first learned that its liabilities were in the neighborhood of $1,000,000. But, on account of there having been theretofore no general book of accounts kept, of the business affairs of the society, which would show either what business it was engaged in, what its debts and liabilities were, or what its property and assets were, and of the fact that all the financial business of the society had been for years transacted by Mr. Henrici, who at first was disinclined to give him information on these subjects, he could not for a considerable time ascertain ,with exactness, either the extent of its liabilities or its means of payment. But at length, through information received from Mr. Henrici, and the assistance of an expert accountant, James Dickson, he, about October or November, 1892, ascertained that on April 1st, 1892, the indebtedness or liabilities of the Harmoney Society amounted to $1,474,958, bearing interest to the amount of about $60,000 per annum; about $1,000,000 of this sum being the indebtedness of the Economy Savings Institution to its depositors and others. This institution was a partnership private bank, in which the Harmony Society was a partner, having at that time an eight-tenths interest, the other parties being Hon. Henry Hice and John Reeves. To meet this indebtedness the society had, of immediately available assets, about $117,444, and securities of the par value of $505,900, which were pledged in banks as collateral security for notes of the society to the amount of $291,588, held by the banks. This indebtedness will be more fully referred to hereafter.

It having become necessary to raise money to meet this indebtedness—some of the creditors pressing for immediate payment—an instrument, Exhibit No. 49, ratifying and confirming the agreements of August 12th, 1847, and April 30, 1890, and authorizing the trustees to sell the real or personal property of the society, and also to borrow money and give mortgages on the real estate of the society therefor, was, at a meeting of the members of the society, held at Economy on December 20th, 1892, after it had been read over and fully explained to them, signed and acknowledged by thirty-three members of the society, being all of the then members, except Benjamin and Henry Feucht and their wives, who refused to join in it. This paper, a copy of which is attached to the answer of Riethmueller *et al.*, as "Exhibit G," is as follows:

"WHEREAS, the undersigned, being all the members of the Harmony Society, at Economy, Beaver County, State of Pennsylvania, deem it proper and desirable that there should be some suitable,

proper and certain evidence of membership in said society, and that the rights and powers of the trustees of said society should be more clearly defined and understood;

"Now, Therefore, While we do hereby ratify and confirm the Articles of Agreement and compacts of our Association entered into at Economy on the 12th day of August, 1847, and those of April 30th, 1892, confirmatory of the former and ratifying the acts of the Board of Elders and Board of Trustees, both of which Articles of Agreements are recorded in the Recorder's office of Beaver County, and are hereby reaffirmed, we and each of us, present members of the said Harmony Society, do hereby state and declare that this declaration, agreement and grant of power is, and is to be taken and considered as supplementary to the agreements, compacts and articles above mentioned, to wit:

"1st. The present members of this society and association are Jacob Henrici, John S. Duss, J. Jacob Nicklaus, Moritz J. Fredericks, Gottfried Lauppe, Johannes Scheid, Franz Gillman, Hugo Miller, Conrad Hermansdoerfer, Julius Stickel, Eduard Kellerman, Henry Feucht, B. Feucht, Blazsius Platz, Sigmund Stiefvater, Regina Lautenschlager, Christina Rall, Karoline Molt, Katrina Nagel, Elizabeth Beck, Lena Rall, Thirza Feucht, Rebecca Feucht, Margaret Feucht, Christina Hoerer, Susie C. Duss, Bertha Geratch, Pauline Stickel, Johanna Hermansdoerfer, Maria Diem, Barbara Boesch, Fredericka Munz, Dorotha Hoehr, Philipina L. Wolfangle, Gottlieb Riethmueller, Samuel Sieber and Elizabeth J. Sieber, and no other person or persons than those above named is a member thereof, and that for the future it is agreed that before any person can become a member of the Harmony Society, he or she shall sign or make his or her mark to his or her name on the roll of membership, which shall always be kept in the record book of the society, which book was established by the aforesaid Agreement of 1847, and is the same in which are entered copies of said articles above mentioned; and shall also sign a written agreement in said book, binding himself or herself to the observance and performance of all and singular, the declarations, stipulations and agreements of the members of the society as contained in the several written articles above mentioned and in these articles, and the book aforesaid containing said roll of membership shall be the sole and exclusive proof of membership in the society.

"2nd. It is hereby declared and agreed that the present Board of Elders of said society are Jacob Henrici, John S. Duss, Johannes Schied, Gottfried Lauppe, Moritz J. Fredericks, J. Jacob Nicklaus, Conrad Hermansdoerfer, Hugo Miller and Gottlieb Riethmueller; and the present Board of Trustees of said society are Jacob Henrici

and John S. Duss. And we do hereby grant and assign to said trustees and their successors, and do hereby agree and declare that the legal title to any and all the property, real and personal, owned or possessed by said society, wherever the same is situated or found, is and is to be taken and considered as fully vested in the said trustees, Jacob Henrici and John S. Duss, above named, and held by them in trust for the society, but with full and complete power and authority in said trustees, their survivors and successors, at such time or times as they may deem advisable, and for the best interests of the society to sell and dispose of the same, or any part or parcel of the same, and for this purpose to make assignments or bills of sale of said personal estate, and to execute and deliver deeds in fee simple, or for any less estate, for any or all said real estate thus sold. This declaration and power to apply to and embrace any and all lands wherever situated, now or hereafter belonging to said Harmony Society, or held in trust for said society, the title to which may be, or stand, in the name of Frederck Rapp, or George Rapp, or of R. L. Baker and Jacob Henrici, trustees; Jacob Henrici and Jonathan Lenz, trustees; Jacob Henrici and Ernest Woelfel, trustees; Jacob Henrici and John S. Duss, trustees; or any or either of them and their successors, and any Board of Trustees hereafter appointed.

"3rd. To remove any possible doubt or misunderstanding as to their right and power in reference thereto, we hereby give and grant to said trustees above named, Jacob Henrici and John S. Duss, and to either of them and their survivors and successors full power, from time to time, and at such times as they or either of them may deem for the true interest of the society to borrow such sum or sums of money for such length of time, at such rates of interest, and upon such other terms as the said trustees, or either of them or their survivors or successors may deem advisable; and jointly or severally to give notes, bills of exchange, bonds, due bills or other evidences of debt therefor, and to secure such loan or loans of money, bonds, notes, due bills or other evidences of debt by pledge or assignment of any stocks, bonds or other personal property of any kind now belonging or that may hereafter belong to said society, and by mortgage or mortgages upon, or deeds of trust of, all or any part of the real estate and leaseholds of real property, which said society now own or possess, or hereafter may own or possess, and for this purpose the said trustees above named, or either of them, their survivors or successors, shall have full power and authority to make, execute and deliver any and all such instruments and conveyances as may in their judgment be reasonably

necessary to enable them, or either of them, to carry the foregoing powers into full effect.

"And in the execution of any instruments or conveyances in writing or otherwise that may be or so become reasonably necessary in the exercise or execution of any of the powers hereinbefore granted, either of said trustees, their survivors or successors may execute the same, and for that purpose may sign the joint names of said trustees, as in the following form: "Jacob Henrici and John S. Duss, trustees," or "Henrici and Duss, trustees," by (name of trustee executing) "trustee."

"IN WITNESS WHEREOF, we have hereunto set our hands and seals this 20th day of December, A. D. 1892."

(Signatures:)

(Acknowledgement.)

Under the powers thus granted the trustees borrowed from Mr. Harry Darlington, trustee, $400,000, and on December 21st, 1892, executed and delivered to him a mortgage on real estate of the society, payable in five years, with the privilege of payment at any time after three years, as security for the loan. This money was borrowed for the purpose of paying pressing creditors and redeeming securities pledged as collateral, thus giving time to convert their securities and other properties into cash without loss for the payment of their indebtedness, and it was used for that purpose. Afterwards more money being needed for the same purpose, the then trustees, on May 21st, 1893, borrowed from Mr. Darlington, trustee, an additional $100,000, and executed and delivered to him a second similar mortgage, payable in three years, with privilege of payment at any time after one year, as security for its payment. This second mortgage has since been paid.

Jacob Henrici, Senior Trustee, died on December 25th, 1892, and on December 27th, 1892, John S. Duss was elected his successor as Senior Trustee, and Samuel Sieber was elected Junior Trustee.

On February 10th, 1893, Benjamin Feucht and Rebecca, his wife, Henry Feucht and Margaret, his wife, Tirza Feucht, Dorothea Hoehr, Regina Lautenschlager, Edward Kellerman and Christina Rall—all members of the society who had signed the agreement of April 30th, 1890—filed their bill in equity (Exhibit No. 15), against the twenty-seven remaining members of the Harmony Society, in the Court of Common Pleas of Beaver County, Pa., praying for a dissolution of the society, a division and distribution of its assets, for the appointment of a receiver, and for an injunction to restrain the defendants from disposing of or encumbering the property of the society, and from creating any debt or liability of the society.

This bill was signed and sworn to by Henry Feucht alone.

On February 13, 1893, at a meeting of the members of the society, held in the church at Economy, the resolutions in German (being Exhibit No. 87) were adopted—and of which the following is a translation, viz.: (See testimony, pages 2792 to 2708, and 1068 to 1070.)

"Since it has come to our knowledge that Benjamin Feucht, Rebecca, his wife, Henry Feucht and Margaret, his wife, Tirza Feucht, Dorothea Hoehr, Regina Lautenschlager, Edward Kellerman and Christina Rall, have caused the filing of a bill in equity in the Court of Common Pleas of Beaver County, Pennsylvania, against the other members of the Harmony Society, in which, among other things, the appointment of a receiver and the dissolution of the society and a division of the assets of the society are prayed for, in which bill false and scandalous charges against our trustees, our Board of Elders and ourselves are made; therefore, be it resolved,

"First. That we protest earnestly against the filing of this bill, and we herewith make known our resolution to stringently oppose the same; that the same are directed against the fundamental laws of our society and seem to spring from selfish and unchristian motives.

"Second. That we herewith declare as untrue the charges which are made in said bill against our trustees, against our elders and against ourselves, and we herewith embrace this opportunity to declare our perfect trust in our present trustees and elders.

"Third. That we require our trustees to employ counsel to take all necessary steps which they may deem wise and necessary to defeat said bill."

These resolutions were signed by twenty-four members of the society, three of whom, viz.: Regina Lautenschlager, Dorothea Hoehr and Christina Rall were named as plaintiffs in the bill.

On March 3, 1893, a motion for a preliminary injunction was refused by the Court after hearing of affidavits and argument. On April 19, 1893, defendants' answer was filed, and on June 30, 1893, the bill and all proceedings were discontinued on record by direction of the plaintiffs.

Immediately after the refusal of the injunction, negotiations were commenced on the part of the Feuchts for a settlement, which, for the reasons hereafter stated, finally resulted in the payment of $5,600 each to the five Feuchts and the conveyance to them of eight acres of land in Chartiers township, Allegheny County, Pa., and their withdrawal on May 16th, 1893, from the society and their releasing of all claims they might have against the society or its

property and the discontinuance of the proceedings in equity. (See testimony of Henry Hice, pages 1579 to 1582 and Exhibits 12 and 20.) The other four plaintiffs in the bill remained in the society and are defendants in the present bill.

At the time of the filing of the Feucht bill, and for some time prior to that time, the affairs of the Economy Savings Institution, of which the Harmony Society was the principal owner, were in a very critical and dangerous condition, on account of a deficiency of funds to pay its depositors if called upon to do so. The filing of that bill and the publications in the newspapers in regard to it and to the condition of the society, both before and after it was filed, caused a great distrust of the bank and a run on it by the depositors, which was heaviest on the day the bill was filed, and also caused great distrust and uneasiness among the other members of the Harmony Society, and fears as to the ability of the society to meet its indebtedness and prevent its dissolution. On account of this dangerous situation of the bank and of the society through the distrust created by these proceedings, and the rumors put in circulation on account of them, it was deemed best by the trustees of the society and their counsel to accept the propositions made by the Feuchts and make the settlement above stated, thus putting an end to the litigation, and, as they believed and expected, to the rumors and distrust caused by it.

After the filing of the Feucht bill, the following named members also withdrew from the society, and formally released and discharged the society from all claims they or their heirs might have against it or its property, receiving from the trustees, out of the funds of the society, the sums hereafter stated, viz.:

Hugo Miller withdrew March 8, 1893, receiving	$5,000
Julius Stickel, Pauline, his wife, and his stepdaughter, Bertha Garatch, withdrew on March 29, 1893, receiving, together	3,500
Jacob Nicklaus withdrew May 5, 1893, receiving	5,000
Sigismund Stiefvater withdrew May 7, 1893, receiving	5,000
Moritz J. Fredericks withdrew June 5, 1893, receiving	5,000
Blazsius Platz withdrew June 9, 1893, receiving	5,000
Christina Hoerer and her son, Leonard Hoerer, withdrew June 23, 1893, receiving	5,000
Samuel Sieber and Elizabeth, his wife, withdrew July 6, 1893, receiving, together	5,000

No other members have withdrawn from the society since these left it; and all of those named, except the last named, withdrew while the Feucht litigation was pending, and while Henry Feucht

remained in Economy. He states in his testimony (page 166) that he remained there until June 21st, 1893. And all of these withdrawals, except that of Sieber and his wife were, in the opinion of the master, caused by that litigation.

On July 6, 1893, Samuel Sieber, when he withdrew from the society, resigned his position as trustee, and Gottlieb Riethmueller was elected his successor as Junior Trustee.

John S. Duss and Gottlieb Riethmueller still continue to hold the offices, exercise the powers and perform the duties of trustees of the society, and with the other members of the Board of Elders are the governing body of the Harmony Society.

On April 11, 1894, all of the then members of the Harmony Society, eighteen in number, signed and acknowledged an agreement (Exhibit No. 80), by which, for the reasons therein stated, they authorized the trustees to convey all the real estate of the society, situated in Allegheny and Beaver Counties, to the Union Company, a corporation under the laws of Pennsylvania, for the purpose of purchasing, holding and selling real estate, in consideration of all the capital stock of the company of the par value of $400,000, except stock of the par value of $2,500, said stock to be held by the trustees for the use and benefit of the Harmony Society. Under the authority conferred by this instrument and their general powers as trustees, the trustees, on April 12, 1894, executed conveyances of all the real estate of the society in Allegheny and Beaver Counties (except a few scattered lots valued together at $3,766. See Exhibit No. 90) to the Union Company in fee, subject, however, to the lien of the two mortgages hereinbefore mentioned, in favor of Harry Darlington, trustee. Certified copies of these conveyances were offered in evidence by the plaintiffs as Exhibits No. 30 and 31.

"WHEREAS, The Harmony Society at Economy, Beaver County, Pennsylvania, is now indebted to various persons in large sums of money, payment of a part of which may be demanded at an early day; and

"WHEREAS, The trustees of said society are advised that a suit is about to be brought against it in the name and on behalf of a large number of persons who claim to be lawful heirs of certain deceased members of said society, the object of said suit being to compel the society to pay large sums of money to said persons as portions of the society's property claimed to be due to said persons as heirs of such deceased members, which claims we regard as totally unfounded; and

"WHEREAS, It may become necessary for said trustees, in order that they may obtain money wherewith to pay the debts of the so-

ciety, and otherwise properly protect its interests, either to borrow money and give security for the payment thereof, or sell the lands of the society and thereby obtain cash for the payment of said indebtedness; and

"WHEREAS, The trustees are advised by counsel that the lands of the society can be better managed, as well as made more available for the purposes of collateral security in case loans are to be effected, and in case of sale a more satisfactory title can be given to the purchaser, if said lands should be first conveyed to an incorporated company, to be thereafter managed, sold and disposed of, by and in the name of said incorporated company; and also avoiding thereby inconvenience and trouble that may arise from time to time by change of trustees, by death or otherwise.

"THEREFORE, We the members of said Harmony Society, do each hereby express our consent, wish and request that John S. Duss and Gottlieb Riethmueller, the present trustees of said society, shall forthwith sell, transfer and convey to the Union Company, a corporation duly created and organized under the laws of the State of Pennsylvania, all the lands, tenements and hereditaments, situated in Allegheny and Beaver Counties, Pennsylvania, now owned and held by said trustees for the benefit of the said society to the end that all said lands, tenements and hereditaments may be owned, held and managed by said incorporated company and be sold and otherwise disposed of from time to time in pursuance of proper corporate action, as may be determined by the directors and officers of said incorporated company.

"The capital stock of said incorporated company, however, to be owned and held by the said trustees for the benefit of the society, in accordance with and on the terms and conditions of the articles of association of said society and the ratifications and modifications thereof, as the same now exists, to the extent of three hundred and ninety-seven thousand five hundred ($397,500) dollars, out of a total capital of four hundred thousand ($400,000) dollars.

"WITNESS our hands and seals this 11th day of April, A. D. 1894."

(Signatures.)

(Acknowledgment.)

The eight thousand shares of the capital stock of the Union Company in February, 1896, was held as follows, viz.: Henry Hice, 10 shares; Gottlieb Riethmueller, 10 shares; Conrad Hermansdoerfer, 10 shares; James Dickson, 10 shares; John S. Duss, 10 shares, and Duss and Riethmueller, trustees, 7,950 shares, of the par value of $50 each. The directors of the corporation were Duss, Hice, Dickson, Riethmueller and Hermansdoerfer. President, John S.

Duss; secretary and treasurer, James Dickson. Hice and Dickson are the only stockholders who are not members of the Harmony Society, and their stock, and that of all the others, is the property of the Harmony Society, and held for it. (See testimony of James Dickson, pages 1875 to 1893; of J. S. Duss, page 2641, and of Hon. Henry Hice, pages 1591-2, and 1666.)

From the time that John S. Duss found that the Harmony Society was largely indebted, he has made great exertions to have the indebtedness paid off out of the property and assets of the society, and has been so far successful that in February, 1896, the whole indebtedness of the society, including its liability as partner in the Economy Savings Institution, had been paid—except the sum of $350,000 still owing to Mr. Darlington on his first mortgage; the sum of $10,000, other indebtedness, and a contingent liability of about $11,000 to depositors of the Economy Savings Institution, who could not be found; for the payment of which indebtedness the society had at that time assets of the value of $530,397, exclusive of the 2,600 acres of land and improvements at Economy, and 2,000 acres of land in Michigan. (See testimony of James Dickson, pages 1852 to 1858, and of J. S. Duss, page 2675.) And this while carrying on and maintaining the society. How this has been done will be more fully referred to hereafter, in connection with the indebtedness.

The remaining members of the society, although reduced in number by deaths, still occupy their property at Economy, still maintain their organization as the Harmony Society, as provided in the agreement of August 12th, 1847; the Board of Trustees and the Board of Elders still continue their organization and attend to the affairs of the society.

In the second article of the agreement of February 15th, 1805 ante page 7), the subscribers agreed

> "to show due and ready obedience toward those who are appointed and chosen by the community as superintendents in such a manner that not only we ourselves endeavor by the labor of our hands to promote the good and interest of the community, but also to hold our children and families to do the same."

And in the second article of the agreement of March 9th, 1827 (ante page 15), they agreed to

> "manifest a ready and cheerful obedience toward those who are or may be appointed as superintendents thereof, holding ourselves bound to promote the interest and welfare of the said community, not only by

the labor of our hands, but by that of our children and families and all others who now are or hereafter may be under our control."

By these articles, provision is made for the carrying on of such industries for the benefit and support of the association as should be determined upon by the superintendent or head of the society, and in such manner as he should direct.

George Rapp was the superintendent or head of the association from its organization in 1805 until his death in 1847. What industries were carried on under his direction prior to 1827 was not shown by the evidence; but from the testimony of Christian Schwartz, one of the plaintiffs, whom his father brought to Economy with the rest of the family in 1826, when he was three years of age, and other younger witnesses, it appears that as far back as the recollection of the witnesses reached—of some, as far back as 1830—the society, in addition to the farming carried on by it, had at Economy a large silk factory, a cotton factory, a woolen factory, a large distillery, a saw mill and a flour mill, and that the manufacture of silk, cotton and woolen cloths and other goods was carried on extensively by it; that it had vineyards, and manufactured and sold whiskey and wine, and made beer; that the manufacture of silk goods continued until about 1850, of cotton and woolen goods until about 1857, and of whiskey until the United States tax was imposed upon it, and of wine until 1890, and the sale of whiskey until that of its own manufacture was exhausted, and of wine until lately; that in 1850 it also carried on a planing mill, shoemaking, tailoring, weaving, tanning, coopering, cabinet making and harness making; that the saw mill, planing mill and flour mill are still carried on by tenants, to whom the mills are leased. (See testimony of C. Schwartz, pages 92 to 96, and 104-5; of Fredericka Mountz, pages 1378-9, and 2105-6; of H. Breitenstein, pages 1958; of H. Hice, pages 1553-4; of Henry Feucht, pages 166 to 169, 321 and 341-2.)

Farming is still carried on at Economy under the direction of the trustees and elders as extensively as it has been, but on account of the reduced number of the members, principally by hired labor. The manufacture of whiskey was abandoned when the United States tax on it was imposed in 1862. The saw mill and planing mill business were carried on until 1892.

In 1855 the society, in connection with the Darlington & Cannelton Railroad, carried on the coal business at Cannelton, Beaver County. In 1859 they purchased the property and carried on the business until 1879 or 1880, and sold their interest about 1882 or 1883. (See Hice's testimony, page 1633.)

In 1857 they had stock in the Little Saw Mill Run Railroad Company, a corporation carrying on the coal business in Allegheny County, having coal fields at Banksville and a short railroad from there to the Ohio river. The trustees, Henrici and Lenz, took an active part in the management of the company. The interest of the society continued until they sold their stock in 1895.

In 1880 they became interested in the Chartiers Block Coal Company, a corporation owning large tracts of coal on Painter's run and Tom's run, Allegheny County, which were mined by lessees. They still hold their stock in this company.

In connection with their interest in the Block Coal Company they assisted in building the Pittsburgh, Chartiers and Youghiogheny Railroad, connecting this coal field with the Pittsburgh and Lake Erie Railroad. The capital stock of this company was 12,000 shares of $50 each, of which the society held 7,866 shares. This stock was sold in 1891 or 1892.

They were also interested in the Valley Car Works at Beaver Falls, from 1899 until they burnt down on April 9th, 1892.

In 1859 they engaged in the manufacture of coal oil at Cannelton with a Mr. Waterbury, and had quite a large plant, and were also interested as partners with Mr. Crom and Oliver P. Scaife in distilling and refining coal oil for illuminating purposes, and had a large plant. After the discovery of petroleum up the Allegheny river, they, about 1861, ceased to carry on these businesses as unprofitable.

At that time the society was the owner of about 6,000 acres of land in Warren County, Pa.; how or when they became the owners of this land was not shown. About 1861 they commenced drilling wells and producing petroleum oil upon it. This business they continued until 1892, part of the time upon a very large scale, producing large quantities of oil and employing a great number of men, and it was for a time very profitable, but towards the last the production of oil decreased to a very small quantity. The oil and lumber business were managed principally by Mr. Lenz while he was trustee.

A large portion of this 6,000 acres of land in Warren County was valuable timber land—pine and other timber; and the society established saw mills upon it and engaged in the lumber business, rafting their lumber on the Ohio river to Economy, Rochester,

They also had saw mills at Cannelton, in connection with their Steubenville and other points, until the timber was about exhausted. mining and railroad operations there, for the manufacture of lumber for building and repairing their cars, etc., which they used in their

business there, at which they employed a number of men. They ceased to operate these mills about 1880 or 1881.

In 1859 and 1860 the society purchased about 700 acres of land at Beaver Falls, for which they were offered in 1865 $80,000. In 1866 they laid this land out in lots and put it on the market for sale, employing John and H. T. Reeves as their agents. The greater part of it has been sold, and the proceeds of the sales received by the society from 1865 to 1896 amounted to the sum of $1,110,648.78. This land is now the borough of Beaver Falls.

In 1867 the society became interested with Messrs. Hussey, Howe, Brown and Binns, of Pittsburgh, in a cutlery works which had been carried on at Rochester. In 1868 a corporation, the Beaver Falls Cutlery Company, was formed, with a capital of $400,000. The society took a large amount of the stock, and the works were removed to Beaver Falls. The society bought out the stock of Hussey & Binns in 1870, and of Howe & Brown in 1872, and became the sole owners. The company was then reorganized and the capital reduced to $250,000—seven-tenths of which was held by the society in the name of Henrici and Lenz, trustees, and one-tenth each by Hice, John Reeves, and H. T. Reeves; the three-tenths of the stock having been transfered to them by Mr. Henrici, he insisting that they should assist in the management of the business. The control of the business, however, was in the trustees of the society, as principal owner—practically in Mr. Henrici, as Mr. Lenz did not take any active part in it. This business was continued against the protest of both Mr. Hice and Mr. John Reeves (see testimony, pages 1537-8 and 1756) at great loss, until about 1887, when the works were closed. This company did a large business and employed many men; and the reason given by Mr. Henrici why the cutlery works and the Western File Works, a manufactory hereafter referred to, should continue in operation, although losing money, was (page 1756), "They must run; these men must be employed; we have sold them lots and built them houses, and we have got to keep these factories running to keep these men employed."

When the cutlery company was reorganized in 1872, it had no working capital, and by the direction of Mr. Henrici, it was drawn by the company from the Economy Savings Institution—a private bank hereafter referred to—to a large amount; and the indebtedness to that bank continued and increased until, on July 31st, 1890, its indebtedness to the bank on overdrafts, as shown by its pass-book with the bank, Exhibits Nos. 52 and 53, and bank statement, Exhibit No. 68, amounted to the sum of $521,674.22; and on January 13th, 1892, as shown by the same book, Exhibit No. 52, to $438,501.02; and on February 4th, 1896, to $430,590.87. These Ex-

hibits, Nos. 52, 53 and 68, also show that on July 31, 1890, the Cutlery Company was indebted to the Savings Institution, in addition to its indebtedness on overdrafts, in the further sum of $300,000, on its note for that amount, held by the Savings Institution, making the whole indebtedness on July 31st, 1890, $821,674.22; on January 13th, 1892, $738,501.02, and on February 4th, 1896, $736,590.87.

The society was also interested in the Western File Works. These works were built and started at Beaver Falls by Foshey & Fessenden, and were carried on by them for some time, until 1875 or 1876, a limited partnership was formed, in which Mr. Henrici took an interest of $40,000 for the Harmony Society. They were carried on in this way until 1884 or 1885, when Mr. Henrici bought for the society the interests of Fosey & Fessenden who had, together, an interest of $37,000. After this the works were managed by the society, through their agents, until they ceased operations, in 1892. This company was also carried on at great loss, and from its organization until its close drew money from the Economy Savings Institution, by the direction of Mr. Henrici, and when they closed in 1892, they were indebted to that bank on overdrafts to the amount of $402,376.43. Henry Hice and John Reeves had also an interest in this company to the amount of $500 each.

The society was also interested in the Beaver Falls Car Works, a corporation organized in 1879, with a capital of $50,000: $47,000 of which was held by Henrici and Lenz, trustees for the Harmony Society, and the remainder, $3,000, was held by John Reeves, Henry T. Reeves and Henry Hice. The works were built in 1879, and the business continued until the works were burnt down on January 15th, 1886. They were never rebuilt.

On March 2nd, 1868, the Harmony Society, by its trustees, Jacob Henrici and Jonathan Lenz, by written articles of agreement of that date (Exhibit No. 48), entered into partnership with John Reeves, Henry T. Reeves and Henry Hice, to carry on the business of bankers and brokers at Beaver Falls, under the firm name of the Economy Savings Institution, with a capital of $20,000; seven-tenths of which, or $14,000, to be paid in and owned by the society, in the name of Henrici and Lenz, trustees, and one-tenth, or $2,000, to be paid in and owned by each of the other three partners. Under this agreement each member of the firm was entitled to one vote for each tenth of the capital owned by him, and a majority of the votes cast determined all questions. The officers of the bank were: President, Henry Hice; vice-president, H. T. Reeves, and cashier, John Reeves. The capital was subsequently increased to $450,000—held in the same proportions by the same

persons—and all paid up. (See testimony of John Reeves, page 1735), and continued in this way until the death of H. T. Reeves in 1889, when, on the settlement of his interest in the bank, as well as in all other business in which he was engaged along with the society, was taken for the society by trustees, Henrici and Woelful, from which time the society had an eight-tenths interest in the bank. (See testimony of John Reeves, page 1757.) The bank had a large business, having in 1890 between 2,000 and 3,000 depositors, whose deposits on July 31st, 1890, at the time John S. Duss became Junior Trustee of the society, aggregated $1,000,796.16—about two-thirds of which was payable on demand and one-third on thirty days' notice. At this time, however, the affairs of the bank were in a very bad condition, the overdrafts of the Beaver Falls Cutlery Company, hereinbefore referred to, amounting to the sum of $521,674.41, its note for $300,000 unpaid, and the overdraft of the Western File Works, also before referred to, amounting to $314,360.47, a total overdraft and note of $1,136,034.88, as shown by the bank statement of July 31st, 1890, in evidence as Exhibit No. 68, and the testimony of George W. Morrison, pages 1771-2. At this time these overdrafts and notes were uncollectable.

This statement of July 31st, 1890, and the testimony of George W. Morrison, pages 1771-2, show that the indebtedness and available resources of the bank at that time were as follows:

Indebtedness to depositors	$1,000,796 16
Indebtedness to other banks	1,997 18
Indebtedness on bills payable	80,000 00
	$1,062,793 34

Available resources:

The items of loans and discounts are there stated as $619,267.94; but included in that are a note of the Beaver Falls Cutlery Company for $300,000, a judgment against Blake & Fessenden for $30,000, and a judgment against the Western File Company for $150,000—aggregating $480,000—all of which were uncollectable; leaving as—

Loans and discounts	$139,267 94
Due from other banks	35,682 46
Cash	31,502 29

Drafts and checks	3,532 10
Beaver Falls Gas Company stock	7,000 00
Credit items	13,271 89
Total available assets	$230,256 63
Leaving a deficiency of at least	$832,536 66

This was the condition of the Economy Savings Institution on July 1st, 1890. On April 1st, 1892, its indebtedness to depositors and others was $1,081,456.02, about two-thirds of which was payable on demand and about one-third on thirty days' notice. And its available assets were about $30,000. (Testimony of James Dickson, page 1813.)

The Economy Savings Institution not being a limited company or corporation, but merely a partnership, the Harmony Society—being a partner—was liable for its whole indebtedness, although it might, after having paid the debts, have recourse against the other partners. How the debts of the bank were paid by the society will be stated hereafter.

In 1875 the society became interested in H. M. Meyers & Company, Limited, in the manufacture of shovels at Beaver Falls. In 1889 their interest was bought out and a corporation was formed known as H. M. Myers & Company.

During 1877 and 1879 they held stock to the amount of $400,000 in the Pittsburgh & Lake Erie Railroad Company, and they also held stock in the Pittsburgh Southern Railroad Company.

Prior to 1877 the Economy Savings Institution had advanced money to C. C. Modes & Company, carrying on a glass works at Beaver Falls. In 1877 the Harmony Society bought their works at Sheriff's sale and carried on the business for some years. It was not successful, and they sold out to other parties before 1880. (Testimony of H. Hice, page 1545.)

In 1857 the society purchased the stock of a glass company at Bridgewater and carried on the business for a short time until they could sell the stock.

They had a large amount of stock in the Valley Glass Works, a corporation, until it burned down on April 9th, 1892. They still have an interest in the winding-up of its affairs. (Testimony of H. Hice, pages 1531-2.)

In 1877 the society bought the Beaver Falls Steel Works from Abel & Pedder, to whom they had advanced a large amount of money. They carried it on until 1893, when they sold it to James M. May. (Hice's testimony, page 1555.)

At one time the society bought an axe factory at Beaver Falls

from Mr. Graff, to whom they had made large advances of money, and had to take the works to save their investment. They carried on the business extensively, until they sold it to Mr. Hubbard, of Bakewell, Hubbard & Company, of Pittsburgh.

The society became the owners of a pottery works at Beaver Falls, formerly carried on by a Mr. Webster; and carried it on for some time with him as manager.

In 1887 they were engaged in the manufacture of bricks at Leetsdale, Pa., and it is still continued there by their lessees. There is no evidence of when it was commenced.

In 1895 the society still carried on the flour mill, cooper shop, machine shop, plumbing shop, carpenter shop, cabinet shop, butcher shop, laundry, bakery, dairy, orchards, farming and raising live-stock, employing seventy-nine men, including one policeman, two teachers and one clerk. Of these men, thirty-three were employed on the farm and in care of the stock and three in the orchards. They had four hundred acres of land under cultivation, raising corn, wheat, oats and potatoes; two hundred acres in hay and pasture land in addition for the cattle, of which they had eighty cows, thirty-five heifers, twenty-one horses, and sixty or seventy pigs. There were also several farms leased. In 1889-90 there had been one hundred and twenty men employed in farming the same quantity of land as was farmed in 1895.

The farm and other works at Economy were carried on by members of the society as long as there was a sufficient number of them to do so; but when their numbers decreased, hired laborers were employed, who were paid by the month, and furnished with houses and all necessaries of life, except clothing, until after Mr. Henrici's death; they were then still paid by the month, at increased wages, but were charged rent for their houses, and they furnished all their own necessaries themselves. By this change in the mode of payment, a large saving in expense was effected for the society.

All businesses carried on by the society outside of Economy were carried on by employes and superintendents not members of the society, under the control and general supervision of the trustees. While Mr. Lenz was one of the trustees, he superintended the farming and other businesses carried on at Economy, and the coal and railroad operations at Darlington, the lumber and oil business up the Allegheny, and was also a director and at one time president of the Little Saw Mill Run Railroad Company, and active in its management. Although often at Beaver Falls, he took but little part in the management of the businesses carried on there. Mr. Henrici superintended all the society's businesses there, and controlled their general management.

The result of these various industries, carried on by the society prior to 1890, was unfavorable for the society. As already stated, Mr. Duss first obtained about December 1st, 1891, a general knowledge that the liabilities of the society amounted to about $1,500,000; and it was not until the fall of 1892, that he fully learned its financial condition, through the report of Mr. James Dickson, whom he had employed as an expert accountant for that purpose as soon after December, 1891, as it was possible for him to do so. Mr. Henrici at first objected to the keeping of any general account books which would show the condition of the finances of the society, as never having been done before and as unnecessary; as, up to that date, there had been no general books of accounts kept, neither had there been any system or regular method of keeping the valuable papers, securities and documents belonging to the society. These were scattered in many places—some in the vault and some in desks and boxes at the Great House in Economy; others in the Economy Savings Institution at Beaver Falls, and others at Tidioute, Warren County, Pa.

After a long investigation by Mr. Dickson it was ascertained about November, 1892, that the direct liabilities of the Harmony Society on April 1st, 1892, were $393,502.56, which included its notes held in Pittsburgh, by the Bank of Pittsburgh, $142,000—by the Farmers Deposit National Bank, $60,600; by the Iron and Glass Dollar Bank, $88,958; by the Monongahela National Bank, $5,000, and in Philadelphia, by Powell & Company, $1,874.75; also notes to Hartman for $13,000, and to Valley Glass Company for $4,000; mortgages on its property in Leet Township, Allegheny County, for $35,340.65, and an account of the Economy Savings Institution. That the indebtedness of the Economy Savings Instituion, for which the society was liable as a partner in that firm, amounted to $1,081,456.02, and its quickly available assets to about $30,000, making the total liabilities of the society $1,474,958.58.

The assets of the Harmony Society at this date were:

600 shares stock of Point Bridge Company, par value	$ 15,000 00
386 shares stock of Tidioute Bridge Company, par value	19,300 00
2271 shares stock of Chartiers Block Coal Company, par value	113,500 00
2100½ shares stock of Little Saw Mill Run Railroad, par value..	105,025 00
500 shares stock of Union Drawn Steel Company, par value	50,000 00

417 shares stock of Beaver Falls Gas Company, par value	41,700 00	
483 shares stock of Tenth Street Bridge Company, par value	12,075 00	
70 shares stock of Allegheny National Bank, par value	3,500 00	
193 shares stock of Bank of Pittsburgh, par value	9,650 00	
270 shares stock of Beaver Falls Bridge Company, par value	27,000 00	
178 shares stock of M. & M. National Bank, par value	8,900 00	
27 shares stock of P., Ft. W. & C. R. R. Company, par value	2,700 00	
50 shares stock of Rochester National Bank, par value	5,000 00	
5170 shares stock of Monongahela Water Company, par value	129,250 00	
Shares stock Glenshaw Oil Company, par value	9,851 00	
		552,451 00
Bonds of Chartiers Block Coal Company, par value	$ 3,000 00	
Bonds of Point Bridge Company par value	13,000 00	
Bonds of Pittsburgh, Chartiers & Y. R. R. Company, par value	276,000 00	
Bonds of Little Saw Mill Run R. R. Company, par value	110,500 00	
		402,500 00
Beaver Falls Steel Works, afterwards sold for	$100,000 00	
Loan to Union Drawn Steel Company	18,750 00	
Account against P., C. & Y. R. R. Company	18,466 89	
Bieler real estate contract,	3,000 00	
Beaver Falls contracts, mortgages, etc.	127,500 00	
Meyers mortgage	28,922 00	
		296,638 89
Deposit in Farmers Deposit National Bank	$ 3,628 46	

Amounts brought forward:		
Stocks		$ 552,451 00
Bonds		402,500 00
Other properties, estimated value..		296,638 89
Balance in Economy Savings Institution	62,117 93	
Economy Savings Institution	28,000 00	
Beaver Falls File Works	26,431 00	
		120,172 39
Harmony Brick Works at Leetsdale.		
Economy Lumber Company at Economy.		
Economy Oil Company, at Economy.		
Economy planing mills at Economy.		
Real Estate.		
At Cannelton, afterwards sold for..	3,124 20	
At McKees's Rocks, afterwards sold for	1,640 00	
At Stowe Township, 8 acres, estimated	20,000 00	
At 32nd Ward, Pittsburgh, sold for	5,500 00	
In 23rd Ward, Pittsburgh, sold for	4,000 00	
In Collier Township, sold for	250 00	
In Leet Township, sold for	3,700 00	
In Warren County, sold for	67,989 29	
In Philadelphia, sold for	9,750 00	
In Michigan lands, sold for	10,736 04	
In Michigan lands, 2,000 acres, estimated	7,000 00	
In Rochester, Pa., estimated	3,000 00	
In New Brighton, estimated	2,500 00	
In Beaver Falls, lots and houses, Beaver Falls Water Company stock	*est.* 197,000 00	
		336,169 53
Land at Economy, 2,600 acres.		
Land in Leet Township		
		$1,707,952 31

Total par and estimated value of all assets of Harmony Society

on April 1st, 1892, excluding properties at Economy and Leet Township, $1,707,952 31.

At that time all above-mentioned stocks and bonds were held by banks as collateral security for notes, either of the Harmony Society or of the Economy Savings Institution, except the following, viz.:

600 shares stock Point Bridge Company, par value....	$ 15,000
386 shares stock Tidioute Bridge Company, par value ..	19,300
2,271 shares stock Chartiers Block Coal Company, par value	113,000
2,100 shares stock Little Saw-Mill Run R. R. Company, par value	105,052
500 shares stock Union Drawn Steel Company, par value	50,000
11 shares stock Beaver Falls Gas Company, par value,	1,100
30 shares stock Beaver Falls Bridge Company, par value	3,000
27 shares stock P., Ft. W. & C. R. R. Company, par value	2,700
50 shares stock Rochester National Bank, par value..	5,000
1,610 shares stock Monongahela Water Company, par value	40,250
Bonds of the Chartiers Block Coal Company, par value..	3,000
	$357,375

The stock of the Bank of Pittsburgh, although not formally pledged, could not be transferred or used until the whole debt owing to the bank was paid; and was thus practically held as collateral for the loan. The securities pledged as collateral were held by the Bank of Pittsburgh, the Farmers Deposit National Bank, the Iron and Glass Dollar Savings Bank, the Allegheny National Bank, the Monongahela National Bank, and the Bank of America of New York, and the State Treasury, as security for loans made by them to Mr. Henrici for the society, and to the Economy Savings Institution. In the fall of 1891 the Farmers Deposit National Bank was dissatisfied with its collateral, insisting on more or better collaterals. The Bank of Pittsburgh wanted the loans reduced. At the same time the State Treasurer had a deposit of $150,000 in the Economy Savings Institution, which owed him, in addition to that, about $13,000, which he wanted satisfactorily secured, or he would file his bonds.

The society, prior to April 1st, 1892, had, in addition to the $276,000 of bonds of the Pittsburgh, Chartiers & Youghiogheny

R. R. Company, 7,866 shares of its stock, as hereinbefore stated. This stock was very much reduced in value, and the bonds were second mortgage bonds, and unknown in the market. In the winter of 1891-2 the trustees negotiated with the Pennsylvania Company for the sale of the road to it, and finally sold their stock to it for $94,000, and received from it, in exchange for their old bonds new ones, guaranteed by the Pittsburgh, Cincinnati & St. Louis R. R. Company or the Pittsburgh & Lake Erie R. R. Company, which enabled them to sell the bonds before unsaleable for $240,000. These sales, with others of securities and real estate, which they were able to make, enabled them to pay off the debt owing by the Economy Savings Institution to the State, some of the indebtedness to the banks, and a part went into the Economy Savings Institution, and carried them on until the fall of 1892.

The most of the unpledged stocks held by the society were not readily saleable, and required time to dispose of them without great loss. The Point Bridge stock could not be sold on account of litigation between that company and the West End Passenger Railway Company in reference to the bridge; the stock of the Chartiers Block Coal Company and of the Little Saw Mill Run R. R. Company were then unsaleable. The others—except the stock of the P. Ft. W. & C. R. R. Company, the Monongahela Water Company, and the Tenth Street Bridge Company—were local stocks, not known in Pittsburgh and difficult to sell. Throughout 1892 there was a continued demand on the Savings Institution by its depositors, which rendered it necessary for the society to keep it supplied with money.

In the fall of 1892 the indebtedness of the Economy Savings Institution to its depositors had been reduced to about $915,000. It was also indebted to the Bank of America $60,000, for money loaned on its note. Notes of the society in the banks of Pittsburgh, amounting to $325,000, were yet unpaid, and the banks were pressing for payment; and all the assets of the society which were then available for payment, viz.: unpledged stock, 1,610 shares; of the Monongahela Water Company, 27 shares; of the P. Ft. W. & C. R. R. Company, and 483 shares of the Tenth Street Bridge Company, amounting in value, altogether, to about $75,000, at the prices for which they were afterwards sold. Mr. Duss being of opinion that the only way to preserve the property of the society from sale by the sheriff was to procure a loan on the security of its real estate, on such terms as would give it time to convert its securities and other assets into cash at a fair price, and thus enable it to pay off its indebtedness, both direct and indirect. And in October or November, 1892, he consulted with J. T. Brooks, Esq.,

vice-president of the Pennsylvania Company, as to how such a loan could be obtained, stating to him the condition of the affairs of the society, and that in his opinion a loan of $800,000 would be necessary to carry the society through its difficulties. Mr. Brooks advised him that it would be impossible to obtain a loan of that amount on the security, but afterwards informed him, that he could obtain a loan of $400,000. Upon this information the agreement dated December 20th, 1892, Exhibit No. 49 (hereinbefore quoted, pages 102 to 106), was prepared by counsel, and on that date explained to and executed by all of the members of the society—except Benjamin and Henry Feucht and their wives, as hereinbefore stated. But before the execution of this paper Mr. Brooks procured for the society a temporary loan of $102,000 from Mrs. McCullough, upon the securities of the society pledged to the Farmers Deposit National Bank, as collateral for the notes of the society held by it; and with this money the notes were paid and lifted. On December 21st, 1892, the mortgage for $400,000 to Harry Darlington, trustee, was executed and delivered as security for the loan of that amount then made by him to the society, payable in five years from date. With this money the mortgages on the Leetsdale property, amounting to $35,000, and the notes held by the banks in Pittsburgh were paid, and the securities held by them as collateral released.

Immediately after the death of Jacob Henrici, Senior Trustee, on December 25th, 1892, and the election of John S. Duss as his successor and of Samuel Sieber as Junior Trustee, the newspapers of Pittsburgh published news items stating that legal proceedings were about to be commenced by the Feuchts for the dissolution of the society and the winding up of its affairs. These publications were continued until the bill in equity against the society (Exhibit No. 15) hereinbefore referred to was filed on February 10th, 1893, by Benjamin and Henry Feucht and others, praying for a dissolution of the Harmony Society and a distribution of its assets. Notices of the filing of this bill were also published. It being generally known that the Harmony Society was the principal owner of the Economy Savings Institution, the publication of these notices and the reports of the difficulties of the society and of the bank caused a run upon the bank, which increased daily until February 10th, 1893, the day the bill was filed, when it was heaviest, and it continued until nearly all of the depositors were paid. On one day, February 10th, 1893, $117,110.03 were drawn from the bank by the depositors.

By the sale of securities, released from the banks as above stated, and also by temporary loans to the amount of $42,000 from the Farmers Deposit National Bank, obtained by the assistance of Mr.

Brooks, and from Mr. Brooks to the amount of $72,000, they succeeded in supplying the Economy Savings Institution with sufficient money to carry it through this run on it, without closing its doors. In May, 1893, it became evident to the trustees that the loan already obtained from Mr. Darlington was not sufficient for the purpose intended, and another loan of $100,000, payable three years after date, was obtained from him through the assistance of Mr. Brooks, for which a second mortgage on the same property was executed and delivered to him. After making this loan the trustees continued the sale of such of the stocks and bonds held by the society as they were able to sell at market prices, and such of the real estate of the society—outside of their Economy and Leetsdale properties—as they could sell, until, on January 1st, 1896, the debts for which the society was liable were reduced to $360,000, and a contingent liability for $11,000 of deposits in the Economy Savings Institution, as hereinbefore stated. $350,000 of this indebtedness was on the first Darlington mortgage. (Testimony of Dickson, page 1853; Duss, page 2567.)

And to pay this indebtedness the society had at that time, in addition to the property, assessed at $581,407, and two thousand acres of land in Michigan valued at $10,000, the following assets (see testimony of James Dickson, pages 1853 to 1858), viz.:

Rochester real estate	$ 3,000	
New Brighton real estate	2,500	
Leet Township, real estate, brick works, etc.	100,000	
Sewickley real estate	11,500	
Beaver Falls real estate	82,959	
Sundry items, real estate	3,766	
		$ 203,725 0

Personal Property.

Economy accounts	$ 6,150	
Stock of Point Bridge Company	15,000	
Stock of Chartiers Block Coal Company,	113,500	
Deposit in Farmers Deposit National Bank	9,169 47	
Economy items	22,991 49	
Accounts and notes	22,387 61	
Mortgages	40,094 08	
Beaver Falls mortgages	35,078 06	
		$ 264,240 71

In Economy Savings Institution		
Cash items	$ 431	
Mortgages	15,000	
Bills receivable	87,000	
		$ 102,431 34
		$ 570,397 06

During this time the amount paid into the Economy Savings Institution by the trustees of the Harmony Society, over and above all amounts drawn out by them, as shown by their pass-books with the bank (Exhibits Nos. 59 and 70) were as follows: On February 28th, 1891, the account of the society was overdrawn $28,661.46. Between that date and December 1st, 1891, the trustees paid into the bank over and above all amounts drawn out by them 53,867 80

Between Dec. 1st, 1891, and April 1st, 1892.....	30,168 70
Between April 1st, 1892, and Oct. 13th, 1892....	49,046 59
Between Oct. 13th, 1892, and Jan. 13th, 1893....	248,515 22
Between Jan. 13th, 1893, and Feb. 1st, 1893.....	208,098 50
Between Feb. 1st, 1893, and May 10th, 1893....	395,206 65
Between May 10th, 1893, and Jan. 1st, 1894....	17,828 16
	$1,002,731 62

On January 1st, 1894, the Savings Institution was indebted to the society for these advances $974,070.16. By January 1st, 1896, this indebtedness was reduced to $853,721.06, as shown by the same pass books.

During the time these payments into the Economy Savings Institution and on the direct liabilities of the society were being made, interest on the debts, the amounts required by the withdrawing members, the cost of maintaining Economy, the taxes and other expenses, had to be and were paid; and, together, amounted to a very large sum as shown by the statements of account hereinafter referred to.

The real estate of the society in Allegheny and Beaver Counties having been conveyed to the Union Company on April 11th, 1894, subject to the mortgages to H. Darlington, trustee, on which interest and $10,000 of the principal had been previously paid, the society afterwards loaned to the Union Company $119,740.43, and on June 13th, 1895, $90,000 was paid by the company to Mr. Darlington in satisfaction of his second mortgage; and on July

26th, 1895, $50,000 was paid by it to him on account of his first mortgage, reducing the debt secured by these mortgages to $350,000.

Exhibit No. 76, which is a condensed statement of the cash received and disbursed by John S. Duss from April 1st, 1892, to January 1st, 1896, (testimony, page 1895) as follows:

Cash Memorandum.

Loan Brooks	$ 400,000 00	
Loan Brooks	100,000 00	
Loan Brooks	102,000 00	
Loan Brooks	42,000 00	
Loan Brooks	30,000 00	
Stocks and Bonds	766,912 00	
Real Estate, Memorandum	243,842 00	
Beaver Falls Steel Co.	100,000 00	
Union Drawn Steel Co., Cash part	50,000 00	
	$1,834,754 00	
Dividend and Coupon Acct.	63,862 74	
Union Drawn Steel Co., Loan	18,750 00	
P., C. & Y. R. R., Special	18,466 89	
Eclipse Bicycle Co., Cash	10,000 00	
Beeler, R. E., Contract	3,000 00	

Disbursements.

Loan Brooks on Mortgage		$ 50,000 00
Loan Brooks on Mortgage		100,000 00
Loan Brooks on Mortgage		102,000 00
Loan Brooks		42,000 00
Loan Brooks		30,000 00
Retiring Members, Cash		66,870 42
Maintenance of Economy		128,212 02
Interest Account		59,777 36
Tax Account		8,261 86
Tax Account		2,235 50
Expense Account		73,351 21
Old Note Account		354,119 20
Economy Savings Institution		792,192 13
		$1,809,028 70
Economy Savings Institution		130,037 35
	$1,948,653 63	$1,948,066 05
Sundries not specified		587 58
		$1,948,653 63

Exhibits Nos. 77 and 79 are statements prepared and proven by James Dickson (Testimony, pages 1897-8), which show the receipts and expenditures of the Harmony Society from April 1st, 1892, to December 31st, 1895, and of the Union Company from January 14th, 1894, to December 31st, 1895; and the financial condition of each at the last date, Exhibit No. 77, is as follows:

Account of John S. Duss, trustee, Harmony Society, covering the period from April 1st, 1892, to December 31st, 1895, concurrent with accompanying account of Union Company.

Debits.

1892.		
April 1—Stock of Economy Savings Institution		$ 360,000 00
April 1—Other stocks		545,700 00
April 1—Bonds		402,500.00
April 1—Industrials		320,503 52
April 1—Economy Disbursement account		18,873 24
April 1—Economy Sav's. Inst., special account	28,895 83	
April 1—Beaver Falls Car Works, special account	26,431 70	
		55,327 53
April 1—P., C. & Y. R. R. account		18,466 89
April 1—Union Drawn Steel Co. loan account		18,750 00
April 1—Bieler real estate contract		3,000 00
Beaver Falls mortgage, contract and judgments		127,805 17
April 1—Myers mortgage		28,922 25
April 1—Deposit balance in E. S. Inst.		62,117 93
April 1—Deposit balance in F. D. National Bank		2,623 46
Real estate items, "B,"		1,010,191 78
Part of real estate sold—part transferred to Union Company—leaving $3,766.01 on hand December 31st, 1895.		
Michigan land sales		10,418 63

Additional Beaver Falls mortgages, contracts and judgments	2,827 98	
Temporary credit, Cutlery Company	10,000 00	
Temporary bills payable	8,512 74	
Additional temporary credits	6,363 12	
Profit accounts, "C,"	348,439 41	
Temporary loan note, No. 38, Farmers D. N. Bank	10,000 00	
Temporary loan note, No. 39, Farmers D. N. Bank	12,000 00	
Temporary loan note, No. 42, Farmers D. N. Bank	10,000 00	
Temporary loan note, No. 63, Farmers D. N. Bank	10,000 00	
Temporary loan note, No. 60, Brooks	102,000 00	
Temporary loan note, No. 70, Brooks	42,000 00	
Temporary loan note, No. 72, Brooks, per F. D. N.	30,000 00	
Mortgage, Brooks	400,000 00	
Mortgage, Brooks	100,000 00	
Credits.		
Payments Farmers D. National Bank, loan, No. 38		$ 10,000 00
Payments Farmers D. National Bank loan No. 39		12,000 00
Payments Farmers D. National Bank loan, No. 42		10,000 00
Payments Farmers D. National Bank loan, No. 53		10,000 00
Payment Brooks loan, No. 60		102,000 00
Payment Brooks loan, No. 70		42,000 00
Payment Brooks loan, No. 72		30,000 00
Shrinkage stocks and bonds		62,652 47
Shrinkage stocks and bonds		22,800 00
Interest		69,121 79
Expense account		70,866.30
Insurance account		170 00
Tax account		11,018 87
Maintenance of Economy		261,522 68

Shrinkage, Beaver Falls Steel Works			162,253	28
Shrinkage, Beaver Falls Real Estate			63,025	00
Shrinkage, Western File Co. Real Estate			61,194	68
Shrinkage, Glenshaw Oil Co.			9,851	52
Shrinkage on stock Economy Savings Inst.			360,000	00
Payments:				
L. Power & Co., note	$ 1,874	75		
Hartman, notes	13,600	00		
Valley Glass, note	4,000	00		
Bank of Pittsburgh, note	142,000	00		
Farmers D. N. Bank, note	60,600	00		
Iron and Glass D. S. Bank, note.	88,958	00		
Economy accounts payable	2,685	90		
Leetsdale mortgages	35,350	55		
Economy S. Inst., special	39,383	36		
Little Saw Mill Run stock, mem.	50	00		
Monongahela Nat'l Bank, note	5,000	00		
			$ 393,502	56
Payments to retiring members, cash	68,870	42		
Payments to retiring members, R. E.	20,000	00		
			86,870	42
Old debt accounts	14,083	18		
Less old debts collected	12,377	31		
			1,705	87
Beaver Falls real estate, expenses	15,656	95		
Beaver Falls Est. Com's.	7,145	27		
	$ 22,802	22		
Less Beaver F. Est. revenue	10,278	92		
			12,523	30
Forward	$4,076,643	65	$1,865,078	74
Credits.				
Life insurance paid			6,077	10
Mortgage adjustment as follows:				
Cash paid by Duss and Riethmueller, trustees	10,000	00		
Transferred to Union Company	490,000	00	500,000	00

Balance in Economy Savings Institution	1,097,731 14	
Not collectable	244,010 98	853,721 06

On Hand.

Industrials not yet closed out	54,019 60	
Beaver Falls mortgages and judgments	40,964 08	
Other mortgages	35,078 06	
Real estate	3,766 01	
Accounts and notes	22,387 61	
Loan to Union Company	119,740 43	
Economy disbursement account	21,991 49	
Stock in cash 5,000 / Union Company, real estate 395,000	400,000 00	
Stock Chartiers Block Coal Company	113,550 00	
Other stocks	21,100 00	
Patent right	10,000 00	
Deposit Farmers Deposit National Bank	9,169 47	851,766 75
	$4,076,643 65	$4,076,643 65

Exhibit No. 79 is as follows:

"Account of John S. Duss, president of the Union Company, covering the period from January 17th, 1894, to December 31st, 1895. Concurrent with accompanying account of Harmony Society.

Debits.

1894.		
Jan. 17—Cash capital, Union Company	5,000 00	
Real estate, Union Company	395,000 00	
		$ 400,000 00
Mortgage liability from Harmony Society to Darlington, trustee.		490,000 00
Loan from Duss and Riethmueller		119,740 43
Coal royalty	85 28	
Oil bonus	1,050 00	

Oil sales		4,425 05	
Gas well rental		365 00	
		5,925 33	
Less paid for gas wells		5,359 81	
			585 52
Rent account			66 25
Bills payable			2,000 00
Credits.			
1895.			
June 13—Paid on mortgage			90,000 00
July 26—Paid on mortgage			50,000 00
Interest on mortgage			45,863 34
Expense account			2,484 91
Insurance account			538 66
Tax account			286 64
Beaver Falls R. E. Expense account		5,878 50	
Beaver Falls R. E. commission account		810 00	
		$ 6,489 00	
Less Beaver Falls rents		5,599 25	
			889 75
Beaver Falls R. E. account		$ 613,450 00	
Beaver Falls File Works (all sold	$ 88,875 00		
Less	52,675 00		
		36,200 00	
New Brighton R. E.		2,500 00	
Rochester R. E.		3,000 00	
Leetsdale R. E.		58,500 00	
Sewickley R. E.		11,500 00	
Beaver Falls R. E.	$ 91,450 00		
Less	8,491 00		
		82,959 00	
Beaver Falls water power		14,200 00	822,309 00
		$1,012,372 30	$1,012,372 30

The foregoing is a statement of the principal facts in evidence, and of all the agreements made by the members of the society with each other since the agreement of August 12th, 1847. There are other facts in evidence, however, which will be stated here-

after, when considering the question of the abandonment of the purposes of the society.

The first part of the second question submitted to the master, and hereinbefore stated, is:

> "Has the Harmony Society been dissolved by the common consent of its members?"

The only averment in the bill of a dissolution by common consent is contained in the twenty-sixth paragraph, and is as follows:

> "That for some time past the members of said Harmony Society have been retiring therefrom and have received the amount of their interest in said association in the land or month, or both, the land being set apart in severalty to them, and have released all their rights and interests in said association in consideration of such payment or conveyance to them, and that by said retirement and withdrawal the membership of said association has been reduced to the persons hereinbefore named members, that by common consent this association has ceased to exist as an association."

The averment is not that the association has been dissolved by the common consent of its *members*, but that by common consent it has ceased to exist. It is admitted in the answer that the membership has been reduced by death and withdrawals from time to time, since its organization, but all the other averments of the paragraph are denied.

Although the articles of association have provided for the admission, and recognized the right of withdrawal of members on certain conditions, none of them have fixed any minimum number as requisite for the maintenance of the society. Having already found that the remaining members of the society still occupy their property at Economy, still maintain their organization as the Harmony Society, as provided in the agreement of August 12th, 1847, and that the trustees and elders still continue to attend to its affairs, the master finds that the society has not ceased to exist by reason of the reduction in the number of its members, as alleged in the bill.

But the question submitted is: "Has the society been dissolved by the common consent of its members?"

The society was formed and continued by written articles of association, agreed upon and signed by all the members—all of which, from that of 1805 to that of 1894, have already been quoted. No other agreements between the members than those quoted have been shown. None of these articles contain any

agreement of, or provision for dissolution, but all recognize the society as continuing and intending to continue. The contracting clause of the agreement of March 8th, 1827 (ante page 14), is as follows:

> "Therefore, be it known to all whom it may concern, that we, the undersigned citizens of the County of Beaver, in the Commonwealth of Pennsylvania, do severally and distinctly, each for himself, covenant and agree to and with George Rapp and his associates as follows:"

And in the 4th and following articles it is:

> "In consideration of the premises, the said George Rapp and his associates do by these presents adopt," and "The said George Rapp and his associates further agree," &c.

It has been already shown (ante page) that Rapp's associates were those who joined in the agreement, the members of the society.

In the agreement of 1836 (ante page 22) it is:

> "We, the undersigned, do hereby severally enter into, covenant and agree with each other as follows:"

And in that of August 12th, 1847 (ante page 29), it is:

> "We, the undersigned, surviving and remaining members of the Harmony Society, and constituting the same, do severally and distinctly, each for himself, covenant, grant and agree to and with all the others thereof, and with those who shall hereafter become members, as follows:"

These agreements have been reaffirmed and continued in all those subsequently entered into by the members, and they are contracts between each individual member, on the one part, and the society or association on the other part, that cannot be cancelled or set aside by the parties to them without the consent of all. Each individual member has rights under the contract—among others that of maintenance in support out of, and enjoyment of the benefits of the common property—which cannot be taken from him by the others without his consent. A dissolution of the society would deprive each member of all the rights and privileges which he has under the contracts. Therefore the society cannot be dissolved by consent without the consent of all the members —not of a majority, but of all who at the time are members. The burden of showing a dissolution of the society by the consent of

the members is upon the plaintiffs, but they have offered no evidence of such consent on the part of the defendants, the present members. The resolutions adopted by the members of the society on February 13th, 1893, in relation to the bill of Benjamin and Henry Feucht and others (hereinbefore quoted, page 108), and the action of all the present members in resisting the present bill, show that they have not consented to the dissolution of the society.

Although the plaintiffs have not shown that the defendants, members of the society, have at any time directly consented to its dissolution, they have claimed in their arguments, that by the agreements of December 20th, 1892 (Exhibit No. 49, hereinbefore quoted, page 102), authorizing the trustees to sell or mortgage the real estate of the association, and of April 11th, 1894 (Exhibit No. 80, hereinbefore quoted, page 112), authorizing the conveyance to the Union Company, were such dispositions of the property as amounted to a dissolution by common consent of its members. But these agreements themselves, and the testimony of Hon. Henry Hice (Testimony, pages 1565 to 1567, 1577 and 1950 to 1952), and of J. T. Brooks, Esq. (Testimony, pages 1415 to 1427 and 1435, 1436), show that the execution of these agreements, and the mortgages and conveyances made in pursuance of them, were not for the purpose or with the intention of dissolving the society, but for the purpose of preserving its existence and protecting its property. This is not such common consent of its members as is intended in the question submitted. The common consent must be given with the intention and for the purpose of effecting the dissolution of the society, and understood by the parties to be for that purpose, and not for something else.

The master, therefore, finds that the Harmony Society *has not been dissolved by the common consent* of its members.

The second and last branch of the question submitted is:

> "Has the society been dissolved by the abandonment of the purposes for which it was founded?"

The best evidence in the case of what were the purposes for which the society was founded is contained in the agreements of March 9th, 1827 (quoted ante, page 13), which is substantially the same as that of February 15th, 1805 (ante, page 6), of October 31st, 1836 (quoted ante, page 19), and of August 12th, 1847 (ante, page 28). These three agreements are all contained in Exhibit No. 18, and formed what is called by the witnesses the "Constitution" of the society. This constitution was signed by every member of the society, either on the dates of the agree-

ments or upon their admission as members, and was the only promise or agreement the members were called upon to make, or did make, to entitle them to all the rights and privileges of members of the society.

The ceremony of admission is thus described by Hon. Henry Hice, who was present many times at the admission of members, in his testimony, pages 1608 and 1667:

> "Q. Judge, you have identified different pages of Exhibit 18; were you present when different members were introduced into the society? I wish you would tell us what the ceremony for the admission of members was.
>
> "A. Well, there was no ceremony, properly speaking, connected with it. Those parties signed, usually, in the assembly room in the Great House at Economy; those Articles of Association were read over and explained to the party, usually read in English. I remember, myself, of reading them in English, not in all cases; but they were read in German, and most of them were written in German as well as in English. They were read in German as well as in English. They were read in German, and the parties were asked if they understood those various articles and their putport and the purposes, and if they would express themselves as understanding them, then they were asked if they agreed to sign those articles and become members of the society by doing so. Upon expressing their desire to do so, they signed those statements, which were prepared, and I subscribed my name as a witness to their signatures. That is all there was of it.
>
> "Q. Was there any pledge or promise made by incoming members, except their signatures, to these articles of constitution?
>
> "A. I can only state, gentlemen, as to what occurred at the time these signatures were made, at the time I witnessed these signatures. I observed pretty closely all that occurred, and there was nothing exacted in the shape of a pledge, nothing more than what resulted by the signing of their names to those articles. I was present on several occasions when members were admitted, when my name appears there as a witness. These are the only occasions."

And on his cross-examination, page 1667:

"Q. You said that no pledge was given by incoming members of the Harmony Society when they signed the constitution; but you did not mean to state or have it inferred that the object, the character and general rules of the society were not fully explained and recognized by members before they signed the paper?

"A. Well, all I can say in relation to that is this: I was present at different times when members were received into the society. The only thing I saw or that I heard in the way of a pledge or obligation on the part of members was what was contained in those Articles of Association."

The statement spoken of by Judge Hice in his testimony as being prepared and signed by the members and by him as a witness is in the following form:

"Be it known to all whom it may concern, that the foregoing documents contained in this book, signed by the members of the Harmony Society on the 9th day of March, 1827, on October 31st, 1836, and on August 12th, 1847, have all been read to us and understood by us, the undersigned, and after a full consideration of their contents, we have this day become parties to same, to all intents and purposes therein contained."

The foregoing testimony of Judge Hice was uncontradicted, and was corroborated by that of Henry Feucht, pages 159, 220 to 244, and 302 to 305; of Julius Stickel pages 391, 435 to 441, and 511; of Moritz Fredericks, 710—witnesses for the plaintiffs—and of Samuel Sieber, pages 2373-4; of John Duss, page 2482; of Fredericka Muntz, pages 2099, 2100; and of Maria Diem, page 1400—witnesses on the part of the defendants. And there was no evidence that any other promise or pledge was ever required of or given by any member than the signing of these written agreements in evidence.

The preamble of the agreement of March 9th, 1827, is as follows:

"WHEREAS, By the favor of Divine Providence an association or community has been formed by George Rapp and many others, upon the basis of Christian fellowship, the principles of which being faithfully derived from the sacred Scriptures, include the government of the patriarchal age, united to the community of property, adopted in the days of the apostles, and wherein the simple object sought is to approximate, so far as human imperfections may allow, to the fulfillment of the will of God by the

exercise of those affections and the practice of those virtues which are essential to the happiness of man in time and throughout eternity.

"AND, WHEREAS, It is necessary to the good order and well being of the said association that the conditions of membership should be clearly understood, and that the rights, privileges and duties of every individual therein should be so defined as to prevent mistake or disappointment on the one hand, and contention or disagreement on the other."

Therefore the subscribers, each for himself, covenanted and agreed to, and with George Rapp and his associates:

1st. They conveyed all their property to George Rapp and his associates, for the benefit and use of the association.

2nd. They agreed to submit to the laws and regulations of the community, to obey the superintendents thereof, and to labor for the community.

3rd. Not to claim any compensation for their services, but that all they did should be considered voluntary service for their brethren.

4th. In consideration of which they were adopted as members of the community, entitled to attend all religious meetings, and both they and their families to receive all necessary instruction.

5th. They and their families were to be maintained and supported, both in health and sickness, as long as they remained in the society.

6th. In case of their withdrawal from the society the value of the property brought into it by them should be returned to them without interest, in one, two or three yearly payments.

By the first article of the agreement of October 31st, 1836, the sixth article of the agreement of March 9th, 1827, was annulled, and all the others declared to remain in full force.

The agreement of August 12th, 1847, as stated in its preamble, was entered into because, in consequence of the death of George Rapp, it had "become necessary to the good order and well-being of the association that some plan should be agreed upon to regulate its future affairs, promote its general welfare, and preserve and maintain it upon its original basis." The first article of this agreement, recognized, re-established and continued the agreement of 1827, except its sixth article, and the agreement of 1836, except as affected by the death of George Rapp, or altered by the agreement. The whole of this agreement is taken up in providing for the appointment of certain officers to exercise the powers and perform the duties theretofore exercised and performed by George

Rapp, as the head or chief of the society, without changing its purposes.

The object and purpose of those uniting in these agreements, as shown by the agreements and the preamble of that of 1827, were the formation, upon the basis of Christian fellowship; that is, obedience to the command of Christ, "Love thy neighbor as thyself," of an association wherein all property should be held for the common benefit, and all members and their families should be supported and maintained during health and sickness out of the common fund, derived from the contribution by the members of the individual property of each, and of their labor and services, which they should render to the society, under the direction and management of their superintendents, for the common benefit; the form of government to be patriarchal; that is, all control and authority over the property of the community and of the conduct of the members to be vested in the chief or head, as in the father of a family; and the rule of conduct of the members to be obedience to the directions of the head and of the officers appointed by him, and the exercise of those affections and the practice of those virtues essential to the happiness of man in time and eternity. What those affections and virtues are is not otherwise stated. No particular form of religious belief was required of the members in any of the agreements made, nor was there any evidence to that effect.

The declarations contained in the first preamble to the agreement of March 9th, 1827, are very general and indefinite; while the provisions of the agreement are clear and explicit, and are stated in the second preamble to the agreement of 1827, to be intended to so define the rights, privileges and duties of the members that they should be clearly understood, and to prevent mistakes or disappointment. The agreements themselves, therefore, show the principal purposes of the association. As shown by these agreements, they are the maintenance and support of the members of the society and their families out of the common fund derived from the contribution by the members of all their property and their labor and services to the society for the common benefit. The services to be rendered under the direction and management of their superintendents. And all control and authority over the property of the community and of the conduct of the members to be vested in the head of the community, and the rule of conduct of the members to be obedience to the direction of the head and the officers appointed by him.

If the society cannot be dissolved by the consent or agreement of a part only of its members, for the reasons already stated, for the same reasons the abandonment of its purposes by a part only of its members cannot cause its dissolution, thus depriving the other

members of their rights under their contracts without their consent. Under the terms of the agreements, if any of the members are dissatisfied, or do not wish or refuse to carry out the purposes of the society, they may withdraw or they may be expelled from the society, and the remaining members would still constitute the society and be entitled to all its benefits and advantages. This has been recognized many times in this society, especially in the case of the withdrawal in 1832 of 175 members, under the leadership of Count de Leon, mentioned in the ninth paragraph of the bill. The principle is also recognized in many of the authorities hereinbefore cited.

The abandonment of the purposes of the society, to cause a dissolution must, therefore, be an abandonment by *all* of its members.

In the last section of the third paragraph of the bill it is alleged that the Harmony Society "has become dissolved, as hereinafter stated"; and in the twenty-fifth paragraph it is charged—

> "That recently said Harmony Society has become dissolved as aforesaid; that all of its purposes and practices established as aforesaid by the founders of said society, and by the ancestors of your orators have been abandoned.

In the seventh paragraph of the bill it is averred—

> "That at the death of Lenz," which occurred on January 22nd, 1890, "and for some time thereafter the said society was solvent, said possessions or trust property amounted in value upwards of $4,000,000. That all of said possessions *up to and until* the grievances hereafter complained of were scrupulously used for the benefit of all its members, and for the advancement, benefit and continuation of the society."

The eighth paragraph of the bill avers:

> "That the Harmony Society, from the period of its inception until a recent date, adhered rigidly to its plan of government, and became illustrious and highly respected by its sincere advocacy of the equality of man, its espousal of the highest principles of Christianity, and its honesty and benevolent admiration of all public functions, whether in the management of its internal affairs or in its many transactions with the citizens of Western Pennsylvania."

In the tenth paragraph it is said,

> "That during the year 1890, after a long period of prosperity and complete harmony in said society, began a second conspiracy," etc.

From these averments in the bill it is evident that if the purposes of the society have been abandoned, and the society thereby dissolved, as alleged in the bill, such abandonment must have occurred between the death of Lenz, in January, 1890, and the filing of the bill, viz., June 27th, 1894.

There was no abandonment of the purposes for which the society was formed, as set forth in the agreement of 1827 (hereinbefore quoted, page 13), contained in any of the agreements signed by the members of the society, and which are all hereinbefore quoted in full; on the contrary, that agreement, except its sixth section, is expressly reaffirmed and continued in the agreement of October 31st, 1836 (page 19); of August 12th, 1847 (page 28); of April 30th, 1890 (page 92), and of December 20th, 1892 (page 102), and is recognized as existing and in force by the provisions of that of April 11th, 1894 (page 112). There has, therefore, been no abandonment of the purposes of the society by the joint action of all of its members acting as a society or association.

The matters averred by the plaintiffs in their bill, as showing an abandonment of the purposes of the society and effecting its dissolution, are set forth in the tenth to the twenty-sixth paragraphs of the bill.

The ninth paragraph avers that there was, in 1831, a conspiracy to dissolve the association and get possession of its wealth by one Count de Leon and others. The whole of this paragraph is denied in the answer, except that in 1832, a number of the members withdrew from the society, and, with one Count de Leon, settled at Phillipsburg, Beaver County, Pa. The plaintiffs offered no evidence in support of this paragraph; and the only evidence in relation to it is Exhibit No. 82, offered in evidence by the defendants, being the agreement of withdrawal of 175 members of the society in 1832, which has been already referred to on page 18, and which does not prove the charges made in this paragraph—further than is admitted by the answer. The master, therefore, finds that the matters averred in this paragraph—and not admitted in the answer—are not proven; and that if they had been true, are immaterial in this case, having occurred long before it is alleged any abandonment of purposes or dissolution occurred.

The 10th, 11th and 12th paragraphs of the bill together, charge a conspiracy on the part of J. S. Duss, one of the defendants, to admit Dr. Cyrus Teed and the members of his society, called the Koreshan Society, presided over by him, to membership in the Harmony Society, and to finally turn over to them all the property of the Harmony Society; and the manner in which this result was to be attained.

As to the matters alleged in these paragraphs, the master finds the following to be the facts, viz.:

John S. Duss, as already stated (page 91), came to Economy on July 9th, 1888, at the request of Mr. Henrici, Senior Trustee, to take charge of the school there. His history prior to that time, and up to the time of his joining the society in 1890, as given by himself (pages 2473 to 2482 and 2655 to 2661), and uncontradicted by any evidence is, that he was born in Cincinnati on February 22nd, 1860; came to Economy with his mother, Mrs. Caroline Duss, when he was two years old, and remained there until he was thirteen; then went to the Soldiers' Orphan School at Phillipsburgh until he was sixteen; then returned to Economy in the spring of 1876; went to Germany with his mother that year, and returned in the fall of same year; remained at Economy until he went to Mt. Union College in July, 1879; upon leaving college he went to the State Reform School at Topeka, Kansas, and was employed there as a teacher for some time; the climate affecting his health, he returned to Ohio, and was married there to his present wife, Mrs. Susie C. Duss, on July 17th, 1882, and was engaged in the business of selling musical instruments. He went to Buroak, Kansas, in 1883, and was in business there with his brother-in-law for a year; bought a stock farm in Nebraska and went to it in 1884, and remained there until, on the request of Mr. Henrici, he returned with his wife and children to Economy in 1888, to take charge of the school there, and was immediately employed by the trustees as school teacher. He had not been from his youth up a mendicant or servant, as alleged in the bill, except as all employes are technically servants.

During all this time his mother, Mrs. Caroline Duss, remained continuously at Economy until her death in April, 1891, with the exception of a few months in 1869; less than three months in 1876, when they went to Germany, and a month or two in 1885. From 1868 she received a pension on account of her husband's services in the Union Army. She was admitted to membership in the society on February 15th, 1887. Prior to that time she had been in the employment of the society.

The matters alleged in the 11th paragraph of the bill are only partly true. The averment that Duss, with the assistance of confederates, began his efforts to obtain admission to the society is denied in the answers and is not true. As hereinbefore stated, he consented to become a member of the society upon the request of the trustees, Henrici and Lenz. His mother, Mrs. Caroline Duss, then a member of the society, was appointed housekeeper for Mr. Henrici, upon the death of Miss Gertrude Rapp, in December, 1889;

but the averment that he had, by intrigue, obtained this result, thus gaining ascendancy over the will of the aged and decrepit trustee, is denied in the answers, and there was no evidence to support it. On the contrary, the testimony of J. T. Brooks (page 1452), Henry Hice (page 1599) and John Reeves (page 1725), as to the character of Mr. Henrici, shows that at this time, although aged, he was not decrepit, and was not weak or easily influenced, but of a very strong and stubborn will, not yielding himself, but influencing and controlling others with whom he came in contact. That Kirschbaum, Wirth and Lenz all died suddenly and within a short time, it is true; but the averment that the remaining members of the Board of Elders were demoralized and wholly under the dominion of Duss, is denied in the answers, and wholly unsupported by any evidence. That Duss, Nicklaus and Fischern were chosen by the Board of Elders to succeed the deceased members is true; but that they became members of the society by their election as members of the Board is not true. As hereinbefore found as a fact, they were elected members of the Board of Elders, and, after having signed the constitution of the society, they were elected members of the Board of Elders. This was in strict accordance with the usages of the society and with the provisions of the third article of the agreement of 1847, declaring the powers of the Board of Elders. The provisions of that article are as follows, viz.:

> "The Board of Elders shall have and exercise the following powers, to wit: * * *
>
> "3rd. To admit new members into the society, and to expel them therefrom. New members, when admitted, shall subscribe this agreement as in evidence of their membership and of the rights acquired by, and the duties imposed upon them."
>
> "To fill all vacancies in the Board of Elders occasioned by the death, resignation or removal from office of its members and their successors, and so, as often as a vacancy shall occur: to fill all vacancies in the office of trustee, when either or both of the said trustees or their successors shall die, resign his office or be removed from the same, and this as often as a vacancy shall occur."

It was objected by the plaintiffs that the election of these parties to membership was void, and that they never became members because they had not served a probation of a year before being admitted to membership. There is no provision in any of the agreements forming the constitution of the society requiring any period of probation before admission to membership of the society. But

the practice of the society has been that any person, not known to the Board of Elders, or with whom they were not sufficiently acquainted to judge of his character, or not altogether satisfied that he would be a proper person to admit to membership, he would be required to remain with the society for a year on probation, that they might become acquainted with his character, and the applicant become acquainted with their principles and manner of life; but if the candidate for admission had become known to them, either by residence or employment in Economy, and they were satisfied with his character, no probationary period was necessary or required. (See testimony of Julius Stickel, p. 385, Moritz Fredericks, p. 688; Caroline Mounts, pp. 2107-8; Samuel Sieber, p. 2375, and John S. Duss, page 2596.) John S. Duss, as has been already stated, had spent a great part of his life in the society, and had been employed there as teacher for nearly eighteen months before his admission as a member; and the others, admitted with him, had also been in the employment of the society at Economy for some time previous to their admission, and it is to be presumed that the Board of Elders were sufficiently acquainted with their characters to justify their admission without probation. The election and admission to membership of these persons was, therefore, regular and legal.

The consent of the other members of the society to the election of any member to the Board of Elders, or to the admission of new members, was not necessary and was never asked. That certain persons were about to be, or had been, admitted to membership was sometimes announced in the church, or at a meeting of the members; but it was not always done, and was not required by the constitution. That the persons above named were about to be admitted to the society was generally known to the members some time before their admission, and the averment that it was objected to by every influential member of the society is denied in the answers, and there is no evidence that there was any objection by any member, influential or otherwise, either to their admission to membership or their election to the Board of Elders. It is also true that a few days after Mrs. Susie C. Duss was, on February 13th, 1890, admitted to membership, along with fifteen others, among whom were Henry Feucht, Benjamin Feucht and Julius Stickel and their wives, Margaret Feucht, Rebecca Feucht and Pauline Stickel, and Bertha Geratch, Stickel's stepdaughter. Exhibit No. 18, page 109.)

It is also true that Ernest Woelfel, Junior Trustee, died in July, 1890, and that John S. Duss, a member of the Board of Elders, was elected by that Board as trustee in his place. This also was in ac-

cordance with the provisions of the seventh paragraph of Article 3 of the agreement of 1847, above quoted, and of the fourth article of the same, which is as follows:

> "We do further ordain and establish a Board of Trustees or agents for the exclusive management of the external business and affairs of the society, which Board shall consist of two persons, *who shall be members of the Board of Elders*, and their successors, who shall be appointed as hereinbefore provided."

Only members of the Board of Elders were eligible to the office of trustee.

The whole of the twelfth paragraph of the bill is denied in the answer, and the plaintiffs have produced no evidence in support of its averments, except the testimony of Henry Feucht, that the large and expensive residence spoken of in the bill was a twenty-six room house, furnished with a steam heater and electric lights, and, "as we understood at the time, was built for Cyrus Teed." (Testimony, page 182.) It appears, however, from the evidence on the part of defendants, that a Mrs. Emertz, a member of the Teed society, visited Economy in 1889 for a few days, spending her time with Mr. Henrici; that in July, 1891, she, while on her way from Philadelphia to Chicago, stopped at Economy, and on the invitation of Mr. Henrici, remained as his guest at the Great House for about three weeks. That having understood at that time that her opinions and doctrines had been misrepresented to the members of the society, she insisted on Mr. Henrici's allowing her to explain them to the Board of Elders. She was not allowed a hearing before the board, but on the evening of the last Sunday of her stay, she was allowed by Mr. Henrici to make an address to the society in explanation of her beliefs. But she did not say that Teed was the true Messiah, or would soon be in their midst. (See her testimony, pages 1227, 1231½, 1239, 1240.) And there is no evidence that Duss made the remarks alleged in the bill.

The erection of the large residence mentioned in the bill was first proposed to the Board of Elders by Mr. Fischern, one of the Board, who had charge of the saw mill and planing mill, then erected or being erected a short distance below the village of Economy, at what was called French Point, for a boarding house for the hands employed there. This was opposed in the board by Mr. Duss, but it was decided by the board that it should be built. The plans for it were prepared by Mr. Creese, the builder, and by him submitted to and approved by Mr. Henrici and Mr. Duss. The building was commenced in the fall of 1890 and completed in the spring of 1891, under the supervision of Mr. Henrici. It was not intended for,

and has not been used since, for any other purpose than as a boarding house for the employes of the planing and saw mills at French Point. It was not understood by or reported among the members of the society that it was built for Cyrus Teed or his society, and there was no rebellion or protest among the members on account of the house or its intended use. Such report was not heard of until such a charge was made in the bill in equity, filed by the Feucht family against the society in 1893. (See Sieber's testimony, pages 2372 and 2385 to 2387.)

Henry Feucht was not expelled from the society as the result of his active opposition and protest against the occupation of this house by the Teed Society, as alleged in the bill. Such use of the house not having been intended or proposed, no opposition to it was made by Feucht or others. But he was expelled from the society by a resolution of the Board of Elders, adopted April 25th, 1892, a year after this house had been completed and occupied as a boarding house, because, as stated in the resolution (see testimony, page 248), from the time of his re-admission into the society, he had kept it in a continual state of turmoil; had not kept his repeated promises to refrain from intrigues and other things giving rise to disturbances; had kept on injuring the trustees and Board of Elders to set them against each other, and, it was said, had used the public press to defame the trustees and the Board of Elders. This expulsion was not at the instance of Duss, but of John Scheid, one of the elders, and was not arbitrary; but after Feucht had been several times called before the board and reprimanded for his conduct, and they had found that he had entirely disregarded their admonitions (see testimony of J. S. Duss, pages 2539 to 2552, and 2700 to 2719). When examined as a witness, in reference to this expulsion, Feucht did not claim that his expulsion was on account of his opposition to the proposed use of the house, alleged in the bill. (See his testimony, pages 162 to 166, and 246 to 253.) After securing a copy of this resolution, Feucht procured the signatures of fifteen members of the society, including his wife, his sister, his brother and his wife, to protest against his expulsion. (Exhibit No. 13.) He also employed counsel, and threatened legal proceedings if not restored to membership. The Board of Elders, fearing the injurious effect litigation might have on the credit of the society in the then condition of its finances then becoming known to them, on the advice of Mr. Duss and Mr. Hice, on August 1st, 1892, rescinded the resolution of April 25th, 1892, and restored him to full membership and "to all his rights and privileges as a member of said society." (Exhibit No. 14, and testimony p. 165.) After his restoration to membership he still continued to disregard

the authority of the Board of Elders and to disobey their orders (see testimony of Feucht, p. 293; of Sieber, 2866-7, and of Duss, pp. 2708 to 2711), and on February 10th, 1893, soon after the death of Mr. Henrici, filed his bill for the dissolution of the society, hereinbefore referred to.

There was no evidence whatever of the character of Cyrus Teed, or of the members of his society or of what were the doctrines taught by him, or of the principles of his society.

All the other averments of this paragraph of the bill are entirely unsupported by any evidence, and are denied in the answers; and the master finds that they are not true, and that there never was any such conspiracy as is charged in the tenth, eleventh and twelfth paragraphs of the bill.

The master finds that the averments of the fourteenth paragraph of the bill are not true. They are all denied in the answers of the society and of Duss, and are altogether unsupported by any evidence, and are all directly denied by Duss in his testimony (page 2637); and the averment that Duss directed that no new members to be admitted, and that he and his wife were the last members admitted, are directly contradicted by Samuel Sieber, a member of the Board of Elders and Junior Trustee (testimony pages 2372-3 and 2383); and Exhibit No. 18, pages 108, 109, 110 and 130, shows that Duss was admitted on January 24th, 1890, his wife and fifteen others on February 13th, 1890; Gottlieb Riethmueller, present Junior Trustee, and Samuel Sieber and wife were admitted February 15th, 1892, and Leonard Hoerer on March 14th, 1893.

The fifteenth paragraph of the bill is not true, as stated. The facts are as hereinbefore found and stated, viz.: The Economy Savings Institution was a private partnership banking company, in which the Harmony Society had eight-tenths interest, and John Reeves and Henry Hice one-tenth interest each. On July 31st, 1890, about the time J. S. Duss became Junior Trustee, it was indebted to its depositors $1,000,796.16, and to others $61,097.18; with a very small amount of assets available to pay its creditors; and it was practically insolvent—so far as the partnership property alone was concerned—if called upon to pay its debts. This condition had been caused by its loans to and overdrafts of the Beaver Falls Cutlery Company and the Western File Works, two manufacturing companies, of which the Harmony Society was the principal owner. These loans and overdrafts, amounting at that time to $1,136,034.88, had been made by the direction of Mr. Henrici, Senior Trustee of the society, and with which Duss has nothing whatever to do. What the loss to the society was from these two manufacturing companies was not known to Duss, and was not shown;

but the management of both companies and of the Savings Institution was controlled by Mr. Henrici as trustee of the Harmony Society, the principal owner of all. Mr. Duss made no such arrangement or agreement with Henry Hice and John Reeves as is charged in the bill; but when he learned the condition of the Savings Institution and the extent of its indebtedness, for which the society was liable as a partner, the trustees placed money of the society to the amount of $974,070.16 in the Savings Institution, to be used in the payment of its other creditors, to relieve the society from danger of judgments against it and the sale of its property by the sheriff. It was necessary to preserve the existence of the society, and the knowledge or consent of the members of the society to their action in this matter was not necessary. Full power in the matter was given to the trustees by the fourth and fifth articles of the agreement of August 12th, 1847, Exhibit No. 83 (ante page 28 to 34), which is as follows, viz.:

> "Article 4th. We do further ordain and establish a Board of Trustees for the *exclusive management of the external business and affairs of the society*, which Board shall consist of two persons who shall be members of the Board of Elders."
>
> "Article 5th. The said trustees shall jointly and severally have and exercise the powers following, to wit:
>
> "1st. In their own names, or that of either of them, or otherwise, to purchase and sell, deal, barter, exchange and traffic, make all contracts and bargains in the prosecution of the business, to invest the funds in stocks and other securities, and make transfers and assignments, to collect debts, *receive and pay out moneys, settle claims, compromise disputes*, institute legal proceedings, appoint and dismiss agents, clerks and attorneys, in fact and at law, and generally to transact all the external business and affairs of the society."

This use of the funds of the society was thus not unauthorized, and was both legally and morally right and proper. It was paying debts for which the society was legally liable as a partner, and morally right, because the society had, through its connection with the Cutlery Works and File Works, drawn the money of the depositors from the Savings Institution, and thus caused its inability to pay its debts.

It is true that no proceedings have yet been commenced against Hice and Reeves for the recovery of the money owing by them to the society through this partnership; but there has not yet

been any settlement of the affairs of the Savings Bank, and neither of these parties have been released from their liability; and it is averred in the answer of Duss, and testified to by him on the witness stand (See Testimony, pages 2683-4), that it is his intention to have a settlement of the partnership business, and to collect from Hice and Reeves what may be found to be owing by them to the society on such settlement.

In the sixteenth paragraph of the bill it is charged that said Duss and certain confederates, conspiring together to defraud the plaintiffs and the members generally, caused to be executed by Jacob Henrici and John S. Duss, trustees, a mortgage for $400,000 upon the lands of the society, including the town of Economy; that this mortgage was made without authority from the members or the plaintiffs, and was executed by Mr. Henrici in *articulo mortis*, and wholly without comprehension of his act, and was for the purpose of paying off claims upon which the society was only partly, if at all, liable.

These charges are not true, as stated. The facts are that on December 21st, 1892, a mortgage upon lands of the society in Allegheny and Beaver Counties, including the town of Economy, was executed by Jacob Henrici and John S. Duss, trustees of the society, to Harry Darlington, trustee, as security for the payment of a loan of $400,000 then made by him to the society. This loan was obtained and the mortgage executed for the reasons and purposes hereinbefore stated, on pages 101, 102 and 107. There was no conspiracy or purpose to defraud any person, either members of the society or others and there was no evidence of any such conspiracy or purpose. The making of this mortgage was not unauthorized. If sufficient authority for this purpose was not conferred upon the trustees of the society by the provisions of the fifth article of the agreement of August 12th, 1847 (hereinbefore quoted, pages 28 to 34), Exhibit No. 83, it certainly was by the agreement or instrument of December 20th, 1892, Exhibit No. 49 (hereinbefore quoted, pages 102 to 166), which, as already stated,(page 102) after it had been fully explained to them, had been signed and acknowledged by all of the members, except Benjamin and Henry Feucht and their wives, who afterwards, on May 16th, 1893, by a paper under their hands and seals (Exhibit No. 10 in Evidence) duly acknowledged, and recorded in Beaver County, in Deed Book, vol 142, page 253, on July 19th, 1893, ratified, approved and confirmed it. (See testimony of Henry Breitenstein, pages 1949, 1989, of Henry Hice, page 1571, etc., and of J. S. Duss, pages 2529-30 and 2733, as to the execution of this paper of December 20th, 1892) No authorization by the plaintiffs was

necessary. They were not members of the society and had no interest in the property.

The plaintiffs offered no evidence in support of the charge that "the mortgage was executed by Henrici when in *articulo mortis* and beyond any power of comprehension of his act," except of the fact that he was eighty-seven years of age, not in good health, and that it was signed by him only a few days before his death. The agreement authorizing the execution of the mortgage, Exhibit No. 49, was signed by Mr. Henrici and the other members on the evening of December 20th, 1892; and the mortgage to Mr. Darlington for $400,000 was signed by Mr. Henrici on the next morning, December 21st, 1892. He died on December 25th, 1892. The testimony of Mr. Duss in relation to the execution of the agreement of December 20th, 1892, by Mr. Henrici (testimony, page 2530), is as follows:

"Q. Did you see Mr. Henrici sign it?

"A. I did.

"Q. Give us the circumstances of it.

"A. After all the other members had signed it, Henry Breitenstein, the Justice of the Peace, and myself, Judge Hice, Mr. J. Twin Brooks, and two or three of the women folks went to his room, and he there signed his name in the space that had been left vacant.

"Q. Did you see him sign it?

"A. I did.

"Q. Did you have any conversation with him before he had signed it?

"A. I did.

"Q. What was it?

"A. We talked over the question of a more full definition of the powers of the trustees and the creating of the mortgage and this extra precautionary measure before the execution of the mortgage then he signed his name. The reason that it is so peculiar is that a space had been left vacant, and it bothered him to get it in between the other names. For years he had been able to sign his name in the dark without spectacles. That is, when he began he made one letter, J, then stopped and looked again, and by stopping and looking at it he got so confused that he signed his last name in German."

Judge Hice testified (Testimony, pages 1575-6) in relation to the execution of the mortgage by Mr. Henrici as follows:

"Q. Were you present at the time that mortgage was signed?

"A. I was.

"Q. Did you see Mr. Henrici sign it?

"A. I did.

"Q. State where it was signed?

"A. It was signed in his room in the Great House at Economy—the room which is directly across from the hall of the larger room, which they term the Assembly Room, where the Board of Elders and the society on such occasions meet. Mr. Henrici was in that room, and it was in the morning, simply nine o'clock or so; in the forenoon, at least. Well, I went into the room, and Mr. Henrici was sitting to the left, and as I went in Mr. Duss was with him, and Mr. Breitenstein. When we went in Mr. Henrici got up from the chair in which he was sitting and came across the room to the table, which stood to the front of the room next the street, and Mr. Henrici sat down. Some words were spoken by him to Mr. Duss, and responded to by Mr. Duss, in German. What they were I do not know. He then took up the pen and signed the mortgage.

"Q. Had you any conversation prior to the execution of that mortgage, about the mortgage, with Mr. Henrici?

"A. Some days before the execution of that mortgage I was up there, and was in his room. I don't know just how long that was before—it was some days—and the matter was spoken of. He referred to it. Could not say just how long that was before it was executed. My impression is he spoke of the paper gotten up by his co-trustee, Mr. Duss, or that it was being gotten up for them, and spoke of the necessity of their getting money—raising money.

"Q. At the time he executed the mortgage, what was his condition?

"A. He was feeble, as far as his physical strength was concerned, but he was able to get up off his chair and walk across the room and sit down on a chair at the table and sign the mortgage. Mentally, I believed then, as I do now, that he understood what he was doing fully."

This testimony is wholly uncontradicted, and it is evident from it that at the time Mr. Henrici signed the agreement authorizing the mortgage, and the mortgage itself, he had a full comprehension of what he was doing, and the master so finds.

There was no evidence in support of the averment that it was the purpose of Duss and others, by the foreclosure of this mortgage, to obtain possession of the property mortgaged; and it is directly contradicted by the testimony of Mr. Brooks (page), and of Mr. Duss (page), and of Mr. Hice (page). And the master finds that it is not true.

As hereinbefore stated, an additional loan of $100,000 was on May 31st, 1893, procured from Mr. Darlington for the purposes already stated, and the second mortgage—referred to in paragraph seventeen of the bill—given as security for its payment. The making of this loan and the execution of this mortgage were within the powers conferred upon the trustees, and authorized by the agreement or instrument of December 20th, 1892 (Exhibit No. 49, quoted ante, pages 102 to 107). The loan secured by this mortgage has been paid in full and the mortgage satisfied, since the filing of the bill in this case.

What stocks and other property were held by the Harmony Society when John S. Duss became trustee on April 1, 1892, and what disposition has been made of them and of the proceeds of such as have been sold has been already fully stated; and such statement has shown that such proceeds have been applied to the payment of the debts of the society and for its uses and benefit, and that the charge in the eighteenth paragraph of the bill, that Duss is attempting to divert the assets of the society from the use of its members and to appropriate them to the enrichment of himself and his confederates, is not true.

The charge in the nineteenth paragraph of the bill, that Duss, by artifice, misrepresentation, coercion and fraud induced or forced all the active and more intelligent members of the society to withdraw and has secretly and fraudulently appropriated several hundred thousand dollars of the moneys of the society, and used it in getting rid of these members of the society, is denied in the answers, is not supported by the evidence, and is not true. The names of the withdrawing members, except the Feuchts, with the dates of their withdrawal and the amounts received by them have been already set forth on page 111. Of the withdrawing members only Henry Feucht, Julius Stickel, Moritz Fredericks and Samuel Sieber were examined as witnesses. Neither Feuchts, Stickel nor Fredericks claimed that Duss induced them to withdraw, and Sieber testified that Duss opposed his leaving the society (testimony, page 2373). All of these withdrawing members were joined as defendants in the bill in equity for the dissolution of the society filed by Benjamin and Henry Feucht and others, on February 10th, 1893, except Leonard Hoerer, who, at that

time, had not yet been admitted to membership. None of these members spoke of withdrawing from the society until after the Feucht bill had been filed, and the run on the Economy Savings Institution—started by the threats of that litigation, and continued and increased by the actual filing of the bill—had continued for some time and from it and the excitement caused by it, it appeared to be doubtful whether the society would be able to get through without loss of all its property. These members then became uneasy and wanted to withdraw. Hugo Miller was the first to speak of withdrawing shortly before the hearing in the Feucht bill. Shortly after the hearing he spoke to Mr. Duss again. The reason he gave for wanting to withdraw was, that on account of his language being a different dialect from that of the others, it was difficult for him to get along with them, and that it was doubtful whether the society would be able to get through its financial difficulties. (Duss' testimony, page 2553). Mr. Duss protested earnestly against his withdrawal, but he insisted, and demanded $5,000. This was finally agreed on, as he had charge of the saw mill, and his management and that of Fischern before him, had caused an annual loss of a larger amount than this to the society. He withdrew on March 8th, 1893, and received the amount he demanded.

Julius Stickel and his wife and stepdaughter, Bertha Geratsch, were the next to ask to withdraw. No objection was made to their withdrawal, as he had refused, from the fall before, when directed by the board, to do any work and had done nothing all the preceding winter. (See his testimony, page 475, and that of Duss, pages 2555-6). He had also assisted the Feuchts in their litigation, and the board were dissatisfied with him. He also demanded $5,000, but was given only $3,500 for himself and family. They withdrew March 29th, 1893.

Jacob Nicklaus was the next who wanted to withdraw. His reason was that they were so much stirred up about the Feucht litigation, and that when he joined he thought the society was wealthy and now it seemed to be bankrupt; and he demanded $5,000—the same that Hugo Miller had received—and threatened litigation if it was refused. Duss protested, and tried to persuade him to remain, but he would not. He was given $5,000 and withdrew May 5th, 1893.

Sigmund Stiefvater also wanted to withdraw, and also demanded $5,000. He complained that they were continually finding fault with him because he drank so much, and he had been suspended from the charge of the blacksmith shop, and he would not stand it any longer. Duss tried to induce him to remain, but

he would not. He was given $5,000, and withdrew May 17th, 1893.

Moritz Fredericks was the next who wanted to leave. He also thought that the society would not be able to get through its financial trouble. He thought he ought to receive $5,000. Mr. Duss and Mr. J. T. Brooks both tried to persuade him to stay, but could not succeed. (See testimony of Duss, page 2559, and of Brooks, page .) He was given $5,000, and withdrew June 5th, 1893.

Blazsius Platz complained that he could not get along with the other members, and insisted on leaving. Mr. Duss tried to keep him, but did not succeed. He withdrew June 9th, 1893, and was given $5,000.

Christina Hoerer and her son, Leonard, withdrew on June 23rd, 1893, and received together $5,000. Her complaint was that her sister, Mrs. Nagle, tormented her and made her life miserable, and she wanted to leave. Mr. Duss and the Board of Elders tried to induce her to remain; but she would not, and threatened to give the society trouble if she was not settled with and allowed to withdraw.

Mrs. Elizabeth Sieber insisted on leaving. She complained that people were talking about her, that lies had been circulated about her, and she would not stand it. She wanted $5,000, but was given $4,000.

Samuel Sieber, after his wife left, also insisted on leaving on account of the stories circulated about his wife, and that she was renting a house in Allegheny with a man named Slick. Mr. Duss, and all who talked to him about his leaving, wanted him to remain. (See his testimony, page .) He withdrew July 6th, 1893, and was given $1,000.

Mr. Duss did not try in any way to induce any of these persons to withdraw, and no witness testified that he had done so, and his testimony as to the reasons given by them for wanting to withdraw, as above stated (see testimony pages 2552 to 2556) is uncontradicted.

The payments made to these withdrawing members were not made secretly, but were known to the Board of Elders and both trustees, and were within the powers of the trustees under the provisions of the second paragraph of the fifth article of the agreement of August 12th, 1847, hereinbefore quoted, page 33—and which is as follows:

> "The said trustees shall jointly and severally have and exercise the powers following, to-wit:

"Second. To make donations to seceding and excluded members and to the representatives of those who are deceased; and for such benevolent and charitable purposes as they may deem prudent and fit."

The amount given to Hugo Miller—the first to withdraw—by the trustees appears to have fixed the amount which those afterwards withdrawing thought they were entitled to receive. The reason why the trustees yielded to the demands of these parties was that two of them plainly threatened litigation, and some of the others seemed to intimate the same intention, if their demand was not acceded to; and in the condition of the finances of the society, and the excitement and suspicion already created by the Feucht litigation, the society could not afford to allow any further litigation against it that could be avoided; and the action of the trustees, in their settlements with the withdrawing members, was certainly prudent, and, under the circumstances, for the best interest of the society.

It is thus evident that the withdrawal of these members was not caused by any scheme or action of Duss, but by the filng of the Feucht bill against the society and the consequent excitement and panic, and by the actions of the plaintiffs in that bill prior to and after it was filed.

After the withdrawal of Hugo Miller, Sigismund Stiefvater and Moritz Fredericks, members of the Board of Elders, a meeting of the members of the society was held on June 6th, 1893, at which the question was submitted for their consideration as to whether they would prefer that the membership of the board, required by the agreement of August 12th, 1847, should be filled up with females, or that the number of members of the board, as fixed by that agreement, should be reduced by an amendment of the agreement, as, in consequence of deaths and withdrawals, there was not a sufficient number of male members left in the society to complete the required number. At an adjourned meeting of the members, held on June 8th, 1893, it was decided that the vacancies in the Board of Elders should be filled by female members; and Mr. Duss requested that each member should write upon a card the names of the three female members that he or she regarded as the best fitted for the position, so that the board should became acquainted with their preferences. (See testimony of Duss, pages 1061 to 1063). Regina Lautenschlager, Fredericka Muntz and Susie C. Duss were elected to fill the vacancies. Afterwards, Blazsius Platz and Samuel Sieber, members of the Board of Elders, having withdrawn from the society, Maria Diem and Karoline Molt were elected to fill their places in the board.

It is true that prior to this time, women had not been elected to the Board of Elders, but the averment in the bill—that women were not eligible—it not correct. In none of the agreements or constitutions of the society in evidence, is there any difference or distinction made between the male and female members of the society, and all the agreements show that the membership was pretty nearly equally divided between the sexes; and all are signed by the women as well as the men, and all their provisions relate to the members, not to male members or female members, and all members are treated as having equal rights and privileges. The only qualification required to be a member of the Board of Elders is contained in Article 2d of the agreement of August 12th, 1847, which is as follows, viz.:

> "Article 2d. We hereby ordain and establish a Board of Elders, which shall consist of nine members of the Harmony Society, and their successors, to be chosen as hereinafter provided."

And in the seventh paragraph of the fourth article of the same agreement authorized the Board of Elders to fill all vacancies that may occur in the board.

The women who were elected to fill the vacancies in the board were members of the society, and therefore qualified. The averment that they were personally selected by Duss, without the assent of the members, is not true. Although the assent of the members of the society was not necessary for their election, but only that of the board, yet, in the choice of the first three female members of the Board of Elders the members of the society were requested to suggest to the board the names of the three members they considered best fitted for the position; and the three preferred by the members were elected by the board to fill the vacancies. That some of them cannot understand English is not a serious disqualification in a society where all, or nearly all, the members are German and the German language is spoken by all.

How Benjamin Feucht and Henry Feucht and their wives and sister withdrew from the society, and why the amounts received by them were given to them, has been already stated.

All the other averments of this paragraph of the bill are denied in the answers and not supported by evidence.

In the twentieth paragraph of the bill, it is charged that Duss secretly, without authority from the members of the society, entered into an arrangement with Hice, Reeves and Dickson to convey the Economy and other lands of the society to the Union Company, and that such conveyance of said property was made by the trustees without the knowledge of the plaintiffs or of the

members of the society, and was an attempt by Duss to "wholly terminate the existence of said society, not only as to the government thereof by the Board of Elders and by the members, but also as to the ownership of any property."

The conveyance of the lands of the society in Allegheny and Beaver Counties to the Union Company is admitted in the answer. All the other averments of the paragraph are denied.

There is no other evidence in relation to this transaction than the application for the incorporation of the Union Company, its letters patent, the agreement of April 11, 1894 (Exhibit No. 80, hereinbefore quoted, page 112), the conveyance to the Union Company (Exhibits Nos. 30, 31 and 32), and the testimony of J. T. Brooks Esq. (testimony, page 1435, etc., and 1512, etc.), of Judge Henry Hice (pages 1590, etc., and 1662, etc.), J. S. Duss (page 2639, etc.), and James Dickson (pages 1875 to 1898). From this evidence the master finds the following to be the facts:

In the fall and winter of 1893, after the Feuchts' litigation against the society had been settled, there were threats of further suits against the society by persons claiming to be heirs of deceased members of the society; there was also some talk of escheat proceedings against it. The society was still indebted, and for the payment of this indebtedness it would be necessary to sell some part of its real estate. J. T. Brooks, Esq., then, as counsel for the society, first suggested to Mr. Duss that it would be advisable, and for the interest of the society, to place the title of the real estate of the society in a corporation, to be created under the laws of the State for that purpose, the stock of which would be owned by the society—for the purpose of putting the title of the property in such a condition that it could be more readily examined and passed, thus facilitating sales when necessary to be made; to remove the title of the property from the attention of those persons talking of escheat proceedings, and also to render it easier to procure a loan upon its security, by a pledge of the stock of the corporation, than it would be upon it as real estate subject to the lien of the two Darlington mortgages—if such loan was needed.

When this was first proposed to Mr. Duss, he objected to it as a departure from the usages of the society, but, after further consideration and consultation with the other counsel of the society, along with Mr. Brooks, he consented; the plan was adopted, and the Union Company was incorporated under the laws of Pennsylvania for "the purpose of purchase and sale of real estate, or for the holding, leasing and selling real estate," with a capital of $5,000, divided into one hundred shares of $50 each, which were

subscribed for by Henry Hice, Richard R. Hice, William S. Morrison, W. J. Stewart and Agnew Hice, twenty shares each. The Union Company having been thus incorporated, the plan of conveying the real estate of the society to it, as suggested by Mr. Brooks, was submitted to the members of the society, approved by them, and the agreement of April 11th, 1894, (Exhibit No. 80, hereinbefore quoted, page 112, etc.), after having been explained to them, was agreed to, signed and acknowledged by all the members, authorizing and requesting the trustees to sell and convey to the Union Company all the lands of the society situate in Allegheny and Beaver Counties, in consideration of stock in said company to the amount of $397,500, to be held and owned by the trustees for the use and benefit of the society, in accordance with the articles of association. In pursuance of this action of the society, all of the one hundred shares of stock held by the above named subscribers—except ten shares held by Henry Hice—were transferred by the subscribers as follows, viz.: Ten shares each to J. S. Duss, Gottlieb Riethmueller and Conrad Hermansdoerfer, members of the Board of Elders of the society, and ten shares to James Dickson, all of whom were elected directors of the corporation; and fifty shares to Duss and Riethmueller, trustees of the society. The capital of the corporation was increased to $400,000 in 8,000 shares of $50 each; the payment of subscriptions to the capital stock, in real estate authorized, and 7,900 shares subscribed for by Duss and Riethmueller, trustees for the Harmony Society, and paid for by the conveyance (Exhibits Nos. 30, 31, and 32) of the real estate of the society to the Union Company, subject to the Darlington mortgages. So that now 7,960 shares of the stock are held by Duss and Riethmueller, trustees of the Harmony Society, for the society, and the remaining fifty shares by Duss, Riethmueller and Hermansdoerfer, members of the Board of Elders of the society, and Hice and Dickson in their individual names; but, as testified by Hice, Dickson and Duss, all of the fifty shares are really the property of the society, and it is the real owner of all the stock of the company, and thus, practically, still the owner of the real estate conveyed, the character of the property of the society only being changed from real to personal, and by the express terms of the agreement of April 11th, 1894 (Exhibit No. 63), it is held by the trustees upon the same trusts as before, viz.:

> "for the benefit of the society, in accordance with, and on the terms and conditions of the articles of agreement of said society, and the ratifications and modifications thereof, as the same now exist."

John Reeves had nothing to do with the formation of the Union Company, and had no arrangement with Mr. Duss in reference to it or to the conveyance of the lands of the Harmony Society to it. (See his testimony, page 1720-1.)

The plaintiffs aver that they are advised that it was not competent for the trustees to convey said properties to said Union Company, but such transfer was a breach of trust and wholly invalid.

By the third paragraph of Article 5 of the agreement of August 12th, 1847 (Exhibit No. 83, hereinbefore quoted, page 33), it is provided:

> "The said trustees shall have power, jointly, to purchase real estate in their own names, and also in their joint names to grant, bargain, sell and convey *all or any of the lands and tenements now or hereafter owned by or belonging to the said society*, and for this purpose to execute deeds of conveyance in fee simple or otherwise in their joint names; but the proceeds of all such sales shall be held in trust for the society."

And in the first paragraph of the same article they are authorized:

> "In their own names, or that of either of them, or otherwise, to purchase and sell, deal, barter, exchange and traffic; make all contracts and bargains in the prosecution of the business, *to invest funds in stocks* and other securities, and make transfers and assignments."

Under the powers thus granted, the trustees have, for many years, purchased and sold lands very extensively—notably at Beaver Falls—and their right to do so has never been questioned. These provisions would clearly authorize a sale of land to the Union Company and the investment of the proceeds of the sale in the stock of that company, which is practically what was done in this case by the sale of the land in consideration of the payment in stock. Nor can it be objected that they had not the power to sell or convey all the lands of the society, or that the land sold is the home of the society. The article authorizes the sale of *all* the land now or hereafter owned by the society. The Economy lands, included in the conveyance to the Union Company, were owned by the society in, and prior to 1847, and were then, as now, the home of the society, and were not excepted from the power of sale; and in 1815, when the society moved from Butler County to Indiana, and again when it moved from Indiana to Economy in 1825 all its lands—including its home—were sold.

In addition to the broad powers given to the trustees by the agreement of 1847, there is the authority given to them by the agreement of April, 1894, signed by all the members of the society, which specially authorizes this particular conveyance and the purposes and consideration for which it is to be made. If all the members of the society, who were the real owners of the property, could authorize or ratify the conveyance, in the manner and for the purposes for which it was made, they have certainly done so.

The master, therefore, finds that the conveyance to the Union Company by the trustees was not an attempt on the part of Duss to terminate the existence of the society, and did not terminate it; that it was not a breach of trust on the part of the trustees; that it was competent for them to make the conveyance; and, further, that it was not an abandonment of any of the purposes for which the association was founded.

The twenty-first paragraph of the bill charges that Duss, for the purpose of winding up and dissolving the society, is now endeavoring to compel the remaining members to depart by means of intimidation and oppression; and alleges, as an instance of such cruel and oppressive conduct, that he, in June 1894, caused Elizabeth Beck to be taken from her residence and incarcerated in an old, abandoned shed, last used as a chicken-coop, and deprived of every comfort necessary for a woman of her age.

The whole paragraph is denied in the answers, and is not sustained by the evidence. There is no evidence that Duss is endeavoring, by any means, to compel the remaining members to withdraw. No members have withdrawn from the society since Hugo Miller and others withdrew, in the early part of 1893, at the time of the Feucht litigation, as hereinbefore stated; the last being Samuel Sieber, in July, 1893. And there is no evidence of any effort to procure the withdrawal of any, or of any complaint on the part of any member of having been improperly treated in any way.

The facts in relation to Elizabeth Beck, as shown by the evidence, are as follows: In 1894, she was about eighty-one years of age, and had long been a member of the society. As far back as 1883, she was able to go about, but too feeble to do anything, and was living in one of the society's brick dwelling houses, with a Mrs. Vierheller, whom she called her housekeeper. In 1892 Mrs. Vierheller was succeeded by Mrs. Wagner, as housekeeper. In 1894 she had become unable to take care of herself, and Fredericka Muntz, one of the Board of Elders, believing from what

she had seen, that she was not being properly cared for by Mrs. Wagner, brought the matter up at a meeting of the board, and, she volunteering to take her to her house and see that she was properly taken care of, it was determined that she should do so, and that the small frame house in the same lot should be put in condition for her. This house was a one-story frame house, about 16 by 32 feet, containing two rooms—which had been, originally, used as a saddlery shop, afterwards for silk-weaving; and at one time, the family in the brick house, while raising chickens, had put the young chickens—or "peepers," as they were called by Henry Feucht—in it to protect them from the rats. It had never before been used as a dwelling. One of the rooms of this house having three windows, was renovated, cleaned, painted and white-washed, two single bedsteads and some other furniture placed in it, and rugs laid on the floor. After this had been done, Elizabeth Beck, on June 8th, 1894, was invited by Fredericka Muntz to take a carriage ride, and at the end of the ride was brought to this house, and remained there until she died, on July 28th, 1894. During this time she was attended to and cared for by Fredericka Muntz, her sister, Mrs. Louisa Scharf, and Mary Naugle, their domestic,—being never left alone, and was washed and dressed by them as if she was a child, as she was entirely unable to wash, dress or take care of herself. She spent the day in Fredericka Muntz's house with her, and slept at night in the frame house. Mary Naugle, whose wages had been increased for taking care of her, sleeping in the same room with her. While with Fredericka Muntz, she received the best care possible, and was contented and satisfied. She died in the frame house of apoplexy, after an illness of only twenty-four hours. Dr. J. T. Bole, who had been the physician for the society for thirteen or fourteen years, attended her, and he testified (testimony, pages 2280 to 2283) that her room in the frame house "was the most suitable place they had in Economy for a sick person; the floor was covered with rugs and was thoroughly clean; the walls, white-washed, and the house was so it could be thoroughly ventilated. It was better than any room in the large house." "It was a better room for a sick person than in any house in Economy, for a sick person." (See testimony of Christina Kolb, paegs 728 to 740; of Henry Feucht, 741 to 743; of Fredericka Muntz, 1381 to 1389; of Mary Naugle, 2271 to 2279; of Dr. J. T. Bole, 2279½ to 2185; of Mrs. Louisa Scharf, 2285 to 2293; of John S. Duss, 2496-7). Elizabeth Beck was not cruelly and oppressively treated, as alleged in the bill, but received kind and suitable treatment.

The only other member of the society, claimed by the plaintiffs

to have been cruelly treated by Duss, is Moritz Fredericks, and the only testimony in relation to it is that of Henry Feucht (page 373) and of John S. Duss (pages 2626 and 2738 to 2741). That of Feucht's is clearly nothing but hearsay and incompetent, and as to the material fact, is contradicted by Duss. It appears that Fredericks—who was then living at the Great House with Henrici and Duss—on the Thursday preceding the death of Mr. Henrici, on Sunday, December 25th, 1892, felt piqued because he was not, in the absence of Mr. Duss, invited to ask a blessing at the table, left the house. His absence was not noticed by Mr. Duss until Sunday, the day of Mr. Henrici's death, when he sent Miller and Nicklaus to look after him—who found him in his tailor-shop. It is not astonishing that Mr. Duss at that time, when he was engaged with the business connected with the $400,000 loan from Mr. Darlington, should not have noticed Fredericks' absence until Sunday. There is no evidence of cruelty or oppression in this case.

The only other case of cruelty claimed by the plaintiffs was that of Mrs. M. Woelfel, the mother of the former Junior Trustee. She was not a member of the society, was living in one of their houses, at a rent of $3 per month. On October 9th, 1893, a resolution was adopted by the Board of Elders that she "be directed to leave the house, as through her gossip, she was causing continual strife." At her request the board, on October 17th, 1893, allowed her to remain until April 1st, 1894, on her promise that she would then leave the village. On April 23rd, 1894, Mrs. Woelfel, refusing to leave the house, the board agreed to charge her $25 per month. The result was that on June 12th, 1895, when this testimony was given, she still remained in the house and had not paid any rent. (See testimony of Duss, pages 941 to 945.)

The charge of intimidation and oppression and cruel conduct on the part of Duss is not sustained by the evidence and is not true.

The twenty-second paragraph of the bill charges that the said Duss has been and now is engaged in the business of selling intoxicating liquors, as the property of the Harmony Society, without any license whatever, either from the government of the United States or from the courts of the State of Pennsylvania. This is denied by the answers.

There has been a great deal of testimony in reference to the sales of liquors, taken by both the plaintiffs and defendants, from which the master finds the following facts:

In 1840 or 1841, which is as far back as the oldest witnesses recollect, the society had a distillery—large for the time—vineyards, wine presses and a brewery, and manufactured and sold

whiskey, wine, cider and beer; and a weekly allowance of wine, cider or beer was regularly distributed to the members, and of cider or beer to their hired laborers; but whiskey was not given out, except in cases of sickness or exposure. The manufacture of whiskey was continued until the United States revenue tax was imposed on it, in . . . . . , when it was discontinued; but its sale was continued until 1891 or 1892, when their stock of their own manufacture was exhausted. They made wine regularly every year until 1890 or 1891, and continued to manufacture beer for a considerable time, but how long was not shown. This distribution of wine and cider among the members is still continued, a certain quantity per day being allowed for each person, as has always been the practice, and has always been and still is made from what is called the wine cellar. The society has, from early times until they leased it within a few years back, carried on a hotel on the Beaver road, which runs through Economy, and was formerly a stage route. At this hotel they kept a bar, where they publicly sold wines, whiskey and beer, until they closed their distillery, upon the imposition of the United States tax. The bar was then also closed, and from that time they sold the whiskey and wines of their manufacture at their store, and delivered them from their wine cellar on order from the store. This continued until 1891, when Mr. Henrici, having been told that they ought to have a license, procured what was called a United States druggists' license; that is, he paid the United States tax on retail sales of liquors for the year beginning July 1st, 1891, and received a certificate of payment. At that time he was informed by the government officer that it was not necessary, as he had a right to sell his own manufacture. This retail license tax has been paid until July 1st, 1896. After the first payment of this tax no whiskey or wine was allowed to be sold except on a physician's prescription, until a wholesale license, under the State law, was granted for the year beginning April 1st, 1895. Up to that time they had never sold any other whiskey, wine or cider than of their own manufacture, and no whiskey at all after 1892, as, at the time of the death of Ernest Woelfel, in July, 1890, there was only a few gallons of their whiskey remaining (as testified by Lawrence Flechrer, page 1306, only four gallons), which was bottled and sold only in special cases. The sale of their wine on prescription was continued until the State license was granted; after that they sold by wholesale liquors they had purchased, as well as their own wines.

Dr. J. T. Bole, of Baden, has been the physician of the society from 1881 to the present time, and had charge of the drug store of the society, which was part of their general store—had his office

there and issued the medicines necessary. He wrote many prescriptions for wine. He prescribed it for any person that would not abuse the use of it, understanding that he had the right to do so. The members were allowed a certain quantity of wine; they could not get more without a prescription. He prescribed whiskey only for people needing it as a medicine.

After John S. Duss was elected Junior Trustee in 1890, he endeavored to reduce the sales of wines by raising the price. Mr. Henrici was indignant at his interference, and on Mr. Duss's suggestion that the wines should not be sold, but kept for the old members who needed it, Mr. Henrici made an investigation of the quantity on hand, purchased a large quantity of grapes and had enough wine made to fill up the casks. In 1893 they had about 30,000 gallons of wine on hand.

Mr. Duss does not use liquors of any kind, is an advocate of temperance, and is opposed to their use; but on account of the state of the finances of the society he wanted to turn this large quantity of wine into cash. In the spring of 1894 he sold a quantity of it to J. J. Speck & Company, licensed wholesale dealers, for $2,000, and still had a large quantity on hand. He was advised that in order to dispose of it it would be necessary to obtain a wholesale license under the law of Pennsylvania, known as the "Brooks Law," and obtained such a license on April 1st, 1895, for one year. During that year, in order to facilitate the sale of the wine, he purchased other liquors to be sold with it, and sold the wines and liquors by wholesale. License for the following year was refused by the Court of Beaver County, as unnecessary, since which time the sales have been stopped. The society had still remaining on hand at the expiration of the license about 15,000 gallons of this wine.

The manufacture and sale of whiskey, wine, cider or beer having always been recognized and treated as a legal, legitimate business, and as they were amongst the earliest industries carried on by the society under the direction and supervision of George Rapp, its founder, their continuance in the same manner up to this time by the society could not be an abandonment of the purposes for which it was founded, unless a failure on the part of the society to comply with the provisions of the Internal Revenue Law of the United States, or the statutes of Pennsylvania in regard to the manufacture and sale of liquors would be such an abandonment. But these laws were enacted after the businesses had been carried on by the society for many years, and were not intended to, and did not prohibit them. The law of the United States is purely a revenue law, and imposed a tax upon sales and provided penalties for

non-payment. By it no tax was imposed for the sale of cider or of wine manufactured by the vendor. As to the sales of whiskey, the society complied with the law, in a manner satisfactory to the officers appointed by the government, by the payment of a special tax on their sales, and such penalty as was imposed by the proper officer for prior neglect to pay the tax. There was, therefore, no violation of this Act.

The Statute of Pennsylvania is also a revenue law and a police regulation. Its object is not to prohibit, but to regulate the sale of wines and liquors, and to derive a revenue therefrom. It does not declare such business immoral, but it prohibits the manufacture of spirituous and malt liquors, and the sale of spirituous, vinous and malt liquors, without a license obtained in the manner provided in the Acts; and to enforce a compliance with its provisions, imposes certain penalties for violation of them. A license is not required for the manufacture or sale of cider. And the Acts provide that druggists may sell on physicians' prescriptions without a license. The society had a drug store, attended to by Dr. Bole, and the testimony is that neither whiskey nor wine was sold, except on physicians' prescriptions. There was evidence, on the part of the plaintiffs, of sales of wine and whiskey having been made, but no evidence that they were made without prescriptions; and the man who was said to have made the sales testified that he made no sales, except on prescription of a physician. Therefore, there was no violation of the Act. But if either the Statutes of the United States or of the State of Pennsylvania have been violated, they each provide certain prescribed penalties of fine or imprisonment for such violation, to be enforced in a prescribed manner by the proper tribunal and proper officers, and no other forfeiture or disqualification. And as the offences created by these Acts are *mala prohibita*, and not *mala in se*, and could not cause a forfeiture of the rights of the members of the society or its dissolution, but could only render the parties committing the offenses liable to the penalties imposed by the Act, and no others.

But the charge in the bill is not against the society, but against John S. Duss, as being engaged in the business of selling intoxicating liquor without license. There is no evidence of Duss's selling any wines or liquors, except the sale made by him to J. J. Speck & Company. But if it were true that he was selling liquors without license, in violation of law, he would be liable to prosecution under the acts and penalties provided, but in no other way; and his individual acts could not affect the rights of the other members or dissolve the society.

The twenty-third paragraph of the bill charges that the principle

of equality has been abandoned; that Duss and his family enjoy every luxury at an annual expense of thousands of dollars, while the aged and infirm members are obliged to be content with the bare necessities of life grudgingly given them.

This paragraph is denied in the answers. The master finds, from the evidence that from some time prior to 1880, up until the taking of the testimony in this case in 1896, all the supplies were furnished to the members in substantially the same manner; that is, coffee, sugar and tea were distributed to the members at the society store —a certain quantity for each person—every two months; all other groceries at such times as they were called for, and in such quantities as the members said they needed; clothing, hats and shoes in the same manner from the same place; flour and chicken feed they got from the grist mill, as they wanted them; meat, viz., beef, veal and pork twice a week from the butcher—who slaughtered twice a week, and gave them about two pounds of meat for each person, and more if they wanted it; bread from the bakery, where they baked every day, as much as they wanted; milk was delivered twice a day at their homes, a pint morning and evening for each person; wine, cider or beer from the cellar, a gallon a week for each person, in summer, and half that quantity in winter. Vegetables and chickens they raised for themselves, in the yards and gardens attached to their houses. Carpets and furniture for their houses were furnished them upon request made at the store or general office. Domestic servants and nurses were furnished those who, from age, weakness or sickness needed their assistance. In case of sickness they were attended by a physician employed and paid by the society. In the distribution of these supplies the families of the members formed a part of the number of persons to be provided for, and there was no discrimination among members and their families as to quantity or quality; they were treated alike. There was no change in the mode of this distribution of supplies from 1880 until the time of hearing the evidence, except that in July, 1893, the trustees, finding that the society was losing money in keeping the society store, sold the store to Wm. H. Breitenstein, who had been employed there until that time; and from that time on, the supplies for the members, which, prior to that time, had been kept at the store, were kept at the general office of the society in the Great House, and distributed to the members from there, instead of from the store, as previously. But no change was made in the mode of distribution, or the quantities distributed. During all this time there were no complaints from any of the members, of the quality or quantity of the supplies furnished them—except by Henry Feucht, who complained about the shoes, and by Julius

Stickel, for whom nothing was good enough, but whose principal complaint was that he at one time got spoiled liver-pudding (420); which occurred through a mistake of the butcher's, and which all the members of the society had received at the same time. Both Feucht and Stickel withdrew, with their families, from the society in the spring of 1893; and none of the present members have made any complaint of any deficiency in their supplies, either as to quality or quantity, or of any inequality among the members in any way. (See the testimony of Henry Breitenstein, pages 1854-5; of Rudolph Wagner, pages 2015 to 2019, 2024, and 2053 to 2056; of W. H. Breitenstein, pages 2064 to 2068; of Johanna Hermansdoerfer, pages 2091 to 2093; of Fredericka Muntz, 2099 to 2104 and 2114; of Gottlieb Nagle, pages 2156-7; of John Duss, pages 228-9; of Samuel Sieber, pages 2358-9; of Caroline Molt, pages 2431-2; Kathrina Nagle, pages 2454 to 2456, and Moritz Fredericks, pages 692-3. And as to mode of distribution of supplies in 1865 (see testimony of Henry Feucht, page 167).

There is no evidence that Duss and his family are enjoying any luxuries or living in any manner differently from or more expensively than the other members of the society; or that the aged and infirm are obliged to be content with the bare necessities of life.

The master, therefore, finds that there is no inequality or discrimination in the mode of life or treatment of the members of the society, and that the averments of this paragraph are not true.

In the twenty-fourth paragraph of the bill, it is averred that John S. Duss is a man of bad moral character, and is, as such, utterly unfitted to act as the spiritual adviser and head of a religious society; that he holds religious views utterly at variance with the creed of the society, and that he has been guilty of the gravest duplicity with his cousin, Fredericka R. Kroll, a young girl of some eighteen years of age—formerly a member of his household—in secretly taking her to the Teed residence in Chicago, where she is continually surrounded by the depraved and wanton women who compose the majority of Teed's so-called "angels." The whole of this paragraph is denied in the answers.

The only evidence on the part of the plaintiffs in support of the first of these averments, is the testimony of John Weggle, and of the witnesses called by them to corroborate the charges made by him.

Weggle was a laborer, who came to Economy on June 19th, 1891, and afterwards brought his family, who arrived there September 21st, 1891. He was first called and examined as a witness for the plaintiffs on April 11th, 1895, and afterwards recalled for further cross-examination on June 3rd, 1895. On his first ex-

amination he testified substantially, that in going for the purpose of renting a house for his family, to see Mr. Duss at the Great House, between six and seven o'clock of an evening in the beginning of August, 1891, he found the front door leading into the main hall of the house, and the door leading from that hall into the parlor or consulting room, both standing wide open, and, walking in without knocking, he saw Duss in the act of criminal intercourse with a girl whom he did not know, but afterwards learned was Fredericka Kroll, who, upon his knocking on the door, ran out through the back door of the room. That at this time it was daylight, the shutters on the windows opening on the street were open, the blinds drawn up and the other doors of the room open. After some conversation with Duss about renting the house, and without any reference either by Duss or him to what he had seen—except Duss saying to him that that was his cousin that he had been cutting up with a little, and he should say nothing about it—he left, and never mentioned the matter to anyone until Mrs. Woelfel and Mrs. Kroll, the mother of the girl, were at his house in June, 1894, when he told them of it.

When Weggle was recalled for further examination on June 3rd, 1895, he testified that all he had testified to on April 11th, 1895, in reference to Duss and Ricka Kroll was untrue and a lie made up by him; that he had never seen anything of the kind testified to by him, or any improper conduct on the part of Duss, either with Ricka Kroll or any other person. All the testimony of the other witnesses on the part of the plaintiffs, in reference to this matter, was mere hearsay and rumor, apparently based on the story told by Weggle to Mrs. Woelfel and Mrs. Kroll. It also appeared from Weggle's testimony and other evidence that he had on March 2nd, 1894, brought a suit against the society for damages for injuries received by him (viz., a broken leg) in its employment, in which suit a verdict had been rendered for the defendant on February 7th, 1895, and that on June 5th, 1894, he had brought suit against the society for wages before Alderman McMasters, which was decided against him on June 11th, 1894. This was about the time he told his story to Mrs. Woelfel and Mrs. Kroll.

Weggle's first testimony was directly contradicted both by Fredericka Kroll (testimony, pages 1171-2) and John S. Duss (page 2646). It was also shown to be improbable, if not impossible to be true by the testimony of W. T. Morris (pages 1103-4); James R. Elliott (pages 1143 to 1149) and Exhibits Nos. 40, 41, 42, 43 and 44, testified to by them, and of Magdalena Schwer and Charles Miller—showing that the room testified to by Weggle was the public parlor or reception room, into which all persons calling at

the Great House were shown; that it was used as a passage way by the occupants of the house in going from the main hall or dining room to another hallway on the opposite side of the room, across which were the rooms occupied by Mr. Henrici, the stairway to the second floor, and other rooms; that Mr. Henrici was in the regular habit of walking for exercise until he had taken one thousand steps every evening immediately after supper, the hour for which was in winter six o'clock and in summer half-past six, and in taking this exercise he walked back and forward between his room and the dining room through the parlor, the room spoken of by Weggle It was also shown by the testimony of Mrs. Barbara Laurent (page 1109), Magdalena Schwer (1134 to 1137), Fredericka Kroll (1168 to 1170, 1215 to 1217 and 1220), Rudolph Wanger (1191 to 1200), Mrs. Emertz (pages 1128 to 1131), William Breitenstein (pages 1245 to 1250), and Mrs. Elizabeth Ott (pages 1128 to 1131), that Fredericka Kroll was not in Economy in August, 1891, having left there on July 28, 1891.

There is no other evidence of immortality on the part of Duss; and the master, therefore, finds that the charges made by Weggle agains him and Ricka Kroll are untrue and entirely without foundation in fact; and that the averment that Duss is a man of bad moral character is not sustained by the evidence.

There is no evidence that Duss holds religious views at variance with the creed of the society, and he denies it in his answer.

As to the third of the above averments, the master finds that Fredericka Kroll came to this country and to Economy with her parents in 1880, and after living a few months with her parents, who had a family of eight children, went to live with her aunt, Mrs. Caroline Duss—her father's sister, and the mother of John S. Duss, in Economy; and went with her to the Great House, when Mrs. Duss was placed in charge of it as housekeeper upon the death of Miss Rapp, early in 1890, and was there employed doing general housework, until she left in July 1891. After she arrived at the age of eighteen, in February, 1891, she wanted to and talked of leaving Economy and learning a trade of some kind, but had not decided what trade; and while Mrs. Emertz, a member of the Teed Society, was visiting Mr. Henrici at the Great House in 1891, she talked with her on the subject. At Mrs. Emertz's suggestion, she concluded to go with her to Chicago, and there learn the trade of compositor in the printing office of Teed's society. Mr. Henrici was informed of her intention, and he approved of it. On July 27th, 1891, she received and receipted for wages then due her from the society. The next day Mrs. Emertz, intending to stop at Zoar, Ohio, left on the morning train for Chicago, and Fredericka

Kroll on the evening train. Mr. Duss, at the request of Mr. Henrici, went with her. She had not told Mr. Duss until that morning of her intention to go to Chicago, and he had not been consulted about it. Mrs. Emertz joined them on the train at Massillon, and they continued together to Chicago, and there went together to Teed's house. Mr. Duss left Chicago that day or the next morning.

There was no evidence that Mr. Duss either suggested or advised Fredericka Kroll to go to Chicago, or that she went there for any improper purpose, or that there was any impropriety in his going with her. While there she went into the printing office and learned the trade of type-setting; and returned to Economy in the fall of 1894. There is no evidence that while there she was surrounded by depraved or wanton women; nor any evidence whatever of the character of the members of Teed's society, or that there was any immoral or improper conduct on her part while there.

The master, therefore, finds that none of the averments of the twenty-fourth paragraph are sustained by the evidence, and that they are not true.

In the twenty-fifth paragraph of the bill it is, among other things, averred "that recently said Harmony Society has become dissolved as aforesaid."

It may be noticed here that all the matters alleged in the bill, from the tenth to the twenty-fourth paragraphs, both inclusive, as those by which the society has become dissolved, are the alleged improper conduct and acts of Duss alone, and not of the other members of the society, either individually or jointly, as a body or society, and therefore if true as alleged could not, as has been already shown affect the rights or interests of any of the members of the society except Duss himself. This is virtually admitted by the last clause of the third paragraph of the bill, and by the last clause of this twenty-fifth paragraph, which avers "that by reason of the facts hereinbefore set forth, the said last members" (viz., the defendants, as stated in the third paragraph) "*except the said Duss and wife*, are now tenants in common of all of said lands and tenements, and entitled to partition thereof in proportion to their respective interests." Why Mrs. Duss, who is a member against whom no charge has been made, should be excluded from any interest in the property is not shown or explained.

In this paragraph it is also averred that all the purposes and practices of the Harmony Society established by its founders, has been abandoned.

In support of this averment, and in addition to the matters

charged in the preceding paragraph of the bill and which have been hereinbefore considered, the plaintiffs claimed and offered evidence for the purpose of showing that Christianity had been abandoned by the practice of drunkenness and adultery by the members of the society, from the time that Mr. Duss became trustee in 1890, until the filing of the bill in June, 1894; that celibacy had been abandoned; that the use of the peculiar dress formerly worn by the members had been abandoned.

Henry Feucht was one of the principal witnesses on the part of the plaintiffs all through the case, and he and Julius Stickel were the principal witnesses for the plaintiffs in support of the above propositions.

Henry Feucht's grandparents, on the mother's side, were members of the society, and were married in the society by Father Rapp, in 1806, and continued members until their death. His parents were also members; they left the society in 1829, and were married; returned to membership in the same year, and continued members until their death. Henry, his brother Benjamin, and two sisters, Terza, and another who died in infancy, were all born in the society during the membership of their parents—Tezra in 1830, Benjamin in 1834, and Henry in 1837. When the other sister was born was not stated. Benjamin was admitted to the society on February 14th, 1857, and Henry on February 15th, 1860, as appears by their signatures to the constitution (Exhibit No. 18, pages 101 and 103). They both withdrew from the society in 1865, Henry receiving from Mr. Baker, trustee, $1,050. Henry lived in different places in Ohio, until he returned to Economy with his wife and children, on October 18th, 1888. Benjamin returned with his wife about the same time. Henry and his brother were required to serve a probation before re-admission to membership. Henry, during his probation, was employed at the brickyard near Leetsdale, until he was removed on account of charges of defrauding the society of money, made against him by Mr. Kirschbaum, one of the Board of Elders. Mr. Kirschbaum opposed his admission to membership on account of an anonymous letter, charging Mr. Lenz, one of the trustees, with immoral conduct, which Mr. Kirschbaum accused Henry of having written; and also on account of stories which he accused Henry of telling about him. His admission to membership was also opposed by several of the members of the society not on the Board of Elders. Kirschbaum was killed in a gas explosion on January 2nd, 1890. After his death Henry appears to have satisfied Mr. Lenz—then Junior Trustee—that he was not guilty, and on the Sunday following Kirschbaum's death, Mr. Lenz announced in church that Henry and his brother, Benjamin, and their

wives would be admitted as members; but in doing so, required them to stand out in front of the congregation, and in a public address rebuked them severely for their conduct while formerly members, and required them to promise to be of good behavior thereafter, as a condition of their forgiveness and admission. (See testimony of Feucht, pp. 256, 276; of Sieber, p. 2376; of C. Moult, p. 2439, and of J. S. Duss, p. 2607 to 2609). After Kirschbaum's death, Henry was sent back to the brickyards, and continued there until he was removed, on account of trouble there, by Henrici and Woelfel, trustees, and by them placed in charge of the orchards and bees. While there he appears to have created trouble, as when, upon the death of Woelfel, in July, 1890, Mr. Henrici proposed him as a member of the Board of Elders, the other members of the board protested so strongly that Mr. Henrici abandoned the idea, as has been hereinbefore stated. He continued to be a disturber of the peace of the society until, on April 25th, 1892, he was expelled from the society by the Board of Elders, and afterwards reinstated, in the manner and for the reasons hereinbefore stated. And afterwards, with his brother and others, he filed a bill for the dissolution of the society, as has been hereinbefore stated.

Henry Feucht, all through his testimony, shows a bitter animosity to J. S. Duss (see especially p. 294). In his testimony he was disposed to exaggerate. He considered what he had heard from others as personal knowledge, and constantly testified to it as such, even after his attention had been called to it. (See his testimony, pp. 215, 217, 250).

Julius Stickel is a stonemason. He was born in 1864 in Russian Poland; came to America in 1887, and to Economy on March 28th, 1888, and was employed there. He was admitted as a member of the society at the same time with the Feuchts, on February 14th, 1890. He was a friend of Henry Feucht's, and although one of the defendants in the Feucht bill, assisted the plaintiffs in it—in their application for an injunction and receiver—with his affidavit. He withdrew from the society on March 29th, 1893, while that bill was pending. He also considered what he heard from others as personal knowledge and testified to it as such.

In considering the charge of drunkenness, it is to be remembered that the Harmony Society was not a total abstinence society; that at the time it was founded, and its purposes and practices established, the opinions and practices of the people generally, and of people of this district especially, as to temperance and the use of intoxicating liquors, were entirely different from those of the present day, as is shown by all accounts of those times; that the original members of the society, and the majority of those who afterwards

joined it, came directly from Germany, a wine and beer drinking country, and that they brought with them the habits and customs of their native land; that from the earliest times of which there is any evidence in this case the society manufactured and sold whiskey, wine, beer and cider, and that wine, beer and cider were regularly distributed to the members and employes as a part of the necessary supplies for themselves and their families, and that all were regularly and habitually making use of these liquors; and that the furnishing and use of these supplies of liquors has been kept up to the present time as a part of the old-established customs and practices of the society. That under such circumstances some of the memmers should sometimes become intoxicated, and some even habitually intemperate, might be expected. The question in this case is, not whether there was any intoxication or intemperance in the society during the trusteeship of Mr. Duss, but rather whether intemperance had so increased in that time over what it had been previously as to amount to an abandonment of the purposes of the society, as shown by their previous practices and habits in this respect, and whether such condition continued to exist at or about the time of the filing of the bill in this case.

When Duss became Junior Trustee in July, 1890, there were forty-five members. Of these the only ones charged with intemperance are Gottfried Lauppe, Jacob Nicklaus, Blazsius Platz, Sigismund Stiefvater, Gottlieb Riethmueller, Hugo Miller, Herman Fischern, Conrad Hermansdoerfer and Lena and Philipina Wolfangel.

Of these, Henry Feucht testified (pp. 316 to 320) that Lauppe, Nicklaus, Platz, Stiefvater and Riethmueller were habitual drunkards, and that he knew of no other instance of drunkenness.

Julius Stickel testified (pp. 460 to 465) that Lauppe had become a drunkard; Stiefvater was drunk every day; Platz was so drunk he could hardly come home with the wagon when he was farming boss; Riethmueller was always, so to say, full; Fischern always had a little high; Lena and Philipina Wolfangel drank too much. That these were all the intemperate members he knew of.

All the other testimony on the part of the plaintiffs and defendants in reference to the intemperance of their members is substantially as follows, viz.:

As to Lauppe—

For the plaintiffs: Florence Miller, p. 534, saw him drunk more than once. For the defendants: H. Breitenstein, p. 1968, denies that he was an habitual drunkard. Gottlieb Nagle, p. 2161, worked under him on the farm for two years; never saw him drunk. Katrina Nagle, p. 2469, never saw him drunk. John S. Duss,

2601, 2702, never saw him intoxicated. George Earle, p. 1368, never saw him drunk. K. R. Wagner, p. 2036, never saw him under the influence of liquor. Fredericka Muntz, p. 2111, he was not a drinking man. John Stoeffel, p. 2212, never saw him drunk.

As to Nicklaus—

On the part of plaintiffs: Florence Miller, pp. 534-5, saw him drunk more than once. John Weggle, p. 619, saw him much intoxicated in spring of 1893.

On part of defendants: J. S. Duss, p. 2615, never saw him intoxicated but once. Wm. H. Breitenstein, p. 1317, never saw him drunk. George Earle, p. 1368, never saw him drunk. J. T. Brooks saw him intoxicated once. Stickel did not include him in his list of intemperates.

As to Platz—

On part of plaintiffs: John Weggle, p. 619, saw him much intoxicated in spring of 1891.

On part of defendants: J. S. Duss, pp. 2627, never saw him intoxicated.

As to Stiefvater—

On part of plaintiffs: Florence Miller, p. 335, "don't believe he ever drawed a sober breath." A. W. Houser, p. 573, saw him drunk on a number of occasions. John Weggle, p. 619, saw him very much intoxicated.

On part of defendents: J. S. Duss, p. 2158, he drank too much.

As to Riethmueller—

On part of plaintiffs: Florence Miller, p. 534, saw him under the influence more than once. J. B. Brysen, p. 568, saw him so drunk in the cellar that he staggered. A. W. Houser, p. 573, saw him drunk on a number of occasions. John Weggle, p. 619, never saw him intoxicated.

On part of defendants: J. S. Duss, pp. 2161-7, never saw him intoxicated. John Reibert, p. 1340, never saw him drunk. George Earle, p. 1368, never saw him drunk. Henry Hice, p. 1630, never saw him under the influence of liquor; p. 1677, have smelt liquor on him, but he knew what he was doing. Henry Breitenstein, p. 1976, never saw him that he would be taken for a drunken man. K. R. Wagner, p. 2058, never saw him drunk.

As to Hugo Miller—

On part of plaintiffs: Jacob Catshall, pp. 450-60, saw him when he thought he was a little more than natural. Feucht did not mention him as intemperate.

On part of defendants: Wm. H. Breitenstein, p. 1317, never saw him drunk.

As to Fischern—

None on part of plaintiffs, except Stickel.

On part of defendants: Fredericka Muntz, p. 2011, he was not a drinking man.

As to Hermansdoerfer—

On part of plaintiffs: Not mentioned by Feucht or Stickel. A. W. Houser, p. 573, saw him drunk on a number of occasions. John Weggle, p. 619, saw him much intoxicated in spring of 1894.

Of these members the master finds that Sigismund Stiefvater was the only one that was habitually intemperate, or that could be called a drunkard; and he had been punished by the Board of Elders for his intemperance by removing him from the charge of the blacksmith shop and putting him to work on the farm. The others were not habitually intemperate, and very seldom intoxicated; and some of those charged, viz.: Fischern, Hugo Miller and the Wolfangels, were not shown to have even been intoxicated.

But four of those charged with intemperance, viz.: Riethmueller, Hermansdoerfer and the Wolfangels, are defendants in the bill or were members of the society at the time it was filed. The others had either died or withdrawn from the society more than a year before this bill was filed. Fischern died in March, 1892, and Lauppe in the spring of 1893. Miller withdrew March 8th, 1893; Nicklaus, May 5th, 1893; Stiefvater, May 17th, 1893, and Platz, June 19th, 1893—all at the time of the Feucht litigation.

From the earliest times within the memory of the witnesses down to the time when Duss was elected Junior Trustee in 1890 there has always been some intemperance among the members. After his election it did not increase, but decreased; and there is no evidence that at or for some time before the time of the filing of the bill in this case there was any intemperance among the members of the society—except the testimony of John Weggle, who is not a creditable witness—that he saw Hermansdoerfer intoxicated in the spring of 1894.

Duss himself is and always has been a total abstainer, and opposed to drinking and drunkenness.

The only persons who charged that there was adultery in the society, and testified in support of those charges, were Henry Feucht, Julius Stickel and John Weggle; and the only persons accused of the crime are John S. Duss, Gottfried Lauppe, Jacob Nicklaus, Sigismund Stiefvater and Mrs. Sieber, wife of Samuel Sieber, Junior Trustee in 1893.

The charge against Duss, made by Weggle, has been already fully considered.

Henry Feucht, in his examination in chief stated, p. 191:

"Adultery and so on, all such things, were carried on in the society, too mean to mention right here in court." In his cross-examination, pp. 323 to 331, as to this charge, he testified as to Lauppe: That in the summer of 1892 a letter was brought to him by a hired man for translation. It was a .confession, signed by a Catholic priest and a doctor in a hospital, from a dying woman to her husband, asking for forgiveness; that she had been approached by Gottfried Lauppe: that if she didn't give in to his wishes, her husband would get his discharge; and she wished he would forgive her. Feucht told the man to take it to Julius Stickel and tell him to have it translated and present it to Mr. Duss. Then, p. 324, as to a conversation with John Scheid about Mr. Duss and Ricka Kroll. On page 325, that he saw Jacob Nicklaus time and again "go into where there were certain women living and stay there at night; and the talk was that he went up to meet women there that he was going with every night that he had a chance." On page 328, "Mrs. Samuel Sieber was a woman of entirely immoral habits, and she kept a continual boarder in her house." On page 329, "I seen Mrs. Sieber myself sitting with two burly-looking men one evening, drinking beer, in a house by herself." He also testified that these were all the instances he knew of.

Julius Stickel testified as to these charges, substantially as follows: (See his testimony in chief, pp. 404 to 412, and cross-examination, pp. 491 to 505.)

In relation to Mrs. Sieber, who was admitted as a member on February 15th, 1892, he said he had heard some talk about Mrs. Sieber, and that in the fall of 1890, he hid himself in the back yard of her house and watched her. When he passed the window was open, the blind up, and the light good; he saw a man named Herman Knupp go in; the blind was pulled down and the light turned down; Knupp was there for a good while, and came out. That was all he saw himself. In the same year, 1890, a paper-hanger named Jacobs, told him: "Mrs. Sieber took me around the neck and went over herself, over to the bed, and bent me down and had such a fun with me." In the winter of 1892-3 after Henrici died, a girl who was living with Mrs. Sieber, and slept in the room with her, told him that Mrs. Sieber sent her to bed early, and a blacksmith came in and looked in her face if she was asleep, and then went over to Mrs. Sieber in the bed. This girl lives in Sewickley. This was all he knew about Mrs. Sieber. He said he told these things to Mr. Duss.

As to Lauppe, he testified that the letter containing the dying confession, testified to by Feucht, was brought to him by the

woman's husband. He first went with it to Sieber, and told him the story; then Lauppe came, and he told him, and said to him: "Now, this man comes here and tells this story that you yourself had to do with this man's woman," and he didn't say no or yes. And when he didn't say no or yes or something, Stickel concluded he was guilty. That Lauppe refused to send the man to court. "And then he (Lauppe) went after the woman and begged her to stay in Economy;" that he knew he did because the woman afterwards told him about it.

As to Stiefvater, he testified that he saw Stiefvater upstairs in a room with a woman, when they pulled down the blinds. When Stiefvater left the society, they were married, and he was told that three or four months after they were married she had a baby.

These were all the instances of adultery that he knew of.

John Weggle, testified, p. 619, as to Stiefvater that he saw him in 1891 walking down the pavement with a girl on each arm.

This is substantially the whole testimony in the case in support of the charge made by Feucht, as above stated, except that in reference to Duss and Ricka Kroll, which has already been found untrue. The greater part of it is hearsay; and altogether it is wholly insufficient to sustain the charges against the individuals accused or against the society as a whole. Lauppe died early in 1893; Nicklaus and Stiefvater withdrew in May, 1893, and Mrs. Sieber in July, 1893—long before the filing of the bill. And none of the present defendants are accused. From 1890 to 1895 the village of Economy was very quiet and orderly.

In the first paragraph of the bill, it is averred that

> "About the year 1807, the said community added to their doctrines and practices, that of celibacy, as being necessary to the proper preparation for the coming of Christ, and thenceforth and until lately, as hereinafter stated, they lived as if single and unmarried, and abstained from marriage."

This is denied in the answer; but it is admitted that in 1807, different members advocated the efficacy of celibacy, and since then this doctrine has been followed and practiced by a great number—if not all of the members of the Harmony Society.

As has been hereinbefore stated, the members of the society were not required to, and did not make any promise or agreement, other than those contained in the written agreements signed by them, and which were called the Constitution of the Society. These agreements contain their whole contract with each other and with the society. None of these agreements requires the practice of celibacy by the members, or makes it a condition of ad-

mission to the society. None of them contains anything tending to show that the adoption of the doctrine of celibacy, or its practice, was required of the members. On the contrary, the agreements of 1805 and of 1827, both contain provisions which would lead any one reading them to an entirely different conclusion. These provisions are contained in the second, third and fourth articles of the agreement of 1805, and in the second, third, fourth and fifth articles of the agreement of 1827; and which have been reaffirmed in all the subsequent agreements. These provisions, as contained in this last agreement, are as follows, viz.:

"Article 2d. We do further covenant and agree to and with the said George Rapp and his associates" * * "holding ourselves bound to promote the interest and welfare of the said community, not only by the labor of our hands, but also by that of *our children, our families*, and all others who now are or hereafter may be under our control

"Article 3d. We do expressly covenant and agree to and with the said George Rapp and his associates, that we never will claim or demand, either for ourselves, *our children*, or for any one belonging to us directly or indirectly, any compensation, wages or reward whatever, for our or their labor or services rendered to the said community, or to any member thereof, but whatever we or our *families* jointly or severally shall or may do, all shall be held and considered as a voluntary service for our brethren.

"Article 4th. In consideration of the premises, the said George Rapp and his associates do by these presents adopt the undersigned jointly and severally as members of the said community, whereby each of them obtains the privilege of being present at every religious meeting, and of receiving not only for themselves, but also for *their children and families*, all such instruction in church and school as may be reasonably required, both for their temporal good and for their eternal felicity.

"Article 5th. The said George Rapp and his associates further agree to supply the undersigned, severally, with all the necessaries of life, as clothing, meat, drink, lodging, etc., for themselves and *their* families." * * * "And if at any time after they have become members of the association, *the father or mother of a family* should die, or be otherwise separated from the community, and should leave *their family* behind, such *family* shall not be left orphans or destitute, but shall partake of the same rights and maintenance as before, so long as they remain in the association, as well in sickness as in health, and to such an extent as their circumstances may require."

These provisions recognize marriage and the family relations

as existing, and the intention that they should continue to exist in the society. It was adopted twenty years after the time it is averred in the bill, that the community added to their doctrines and practices, that of celibacy.

Although celibacy was not recognized by any of the agreements, or Constitution of the Society, the practice seems to have been adopted to a certain extent. Although there was a good deal said in the testimony about the society being a celibate society, the only rule or practice that appears to have been adopted and acted upon was that members were not allowed to marry in the society. If they determined to marry, they had to leave it to be married. But married persons with their families—whether former members or not—were admitted to membership, and allowed to live together with their families; and their children and families were provided for and supported by the society, in accordance with the provisions of the agreement of 1827, above quoted. And this appears to have been the practice at least since 1826 or 1827, when Christopher Schwartz and his wife were admitted and allowed to bring with them a large family of children, the oldest only thirteen years of age. In 1829, the parents of Henry Feucht, being members, left and were married, returning to the society the same year and continuing members from that time until their death, and having born to them, in the society and during their membership, four children, as has been already stated. Henry Feucht and his brother Benjamin also left the society, and, returning afterwards with wives and families, were admitted to membership, and continued to live at Economy with their wives and families until their withdrawal in 1893. Julius Stickel, his wife and family of three children, J. S. Duss and his wife and family, Hermansdoerfer and his wife, Lenz and his wife, Samuel Sieber and his wife, are other instances of married people with families being admitted to the society and afterwards living together. Julius Stickel testified (pp. 450-1) that while he was there (from 1888 to 1893) the married people, both members and others, always lived together in the same house with their families. And from the documents in evidence it appears there has always been a number of married people members of the society. The deed of Frederick Rapp, attorney in fact of George Rapp and his associates, to Ziegler, dated May 6th, 1815, and recorded on March 11th, 1816 (Exhibit No. 86), recites his power of attorney, dated June 14th, 1814, as signed, sealed and acknowledged by George Rapp and his associates naming them, to the number of four hundred and nineteen persons, two hundred and

two of whom are married men and their wives, including them *George Rapp and Christina, his wife.*

The power of attorney to George Rapp, dated July 5th, 183-, in evidence as "Exhibit No. 85," is signed and acknowledged by four hundred and two persons, one hundred and seventy-seven of whom are men and two hundred and twenty-five women; and the certificate of acknowledgment state "that the woman having husbands at the time of signing and sealing of said instrument, were severally examined separate and apart from their said husbands."

There is attached to page 72, of Exhibit No. 18, a memorandum, dated February 12th, 1845, in the same handwriting as that on the page, apparently—stating the number of members of the society as one hundred and fifteen unmarried men, twenty widowers and twenty-nine married men, and one hundred and twenty-eight unmarried women, forty-nine widows and twenty-nine wives—footing up one hundred and sixty-four men and two hundred and six women, and showing fifty-eight married members.

The agreement of August 12th, 1847 (Exhibit No. 83) is signed and acknowledged by two hundred and eighty-eight members, with the separate acknowledgment of twenty-three married women, showing forty-six married members.

The agreement of April 4th, 1890 (Exhibit No. 19), is signed and acknowledged by forty-five members, twenty-six women and nineteen men, with the separate acknowledgment of five married women, showing ten married members.

The agreement of December 20th, 1892 (Exhibit No. 49), is signed and acknowledged by thirty-three members, fifteen men and eighteen women; separate acknowledgments of four married women. Henry and Benjamin Feucht and their wives, members, refused to sign this agreement; there were therefore then twelve married members.

The agreement of April 11th, 1894 (Exhibit No. 80), is signed and acknowledged by eighteen members—five men, thirteen women—with separate acknowledgments of two married women, showing four married members.

These figures show a comparative increase in the practice of celibacy in the society, rather than a decrease or abandonment of it.

The master, therefore, finds that the practice of celibacy was not one of the purposes for which the society was founded, but in the manner practiced in the society was only a custom or rule of conduct, which might be changed or abolished by the society

without an abandonment of its purposes; and, further, that there has been no abandonment of celibacy, as it has been practiced in the society from its first adoption.

There was much evidence on the part of the plaintiffs showing that the members of the society formerly wore a peculiar dress, so different from that generally worn that when seen on the streets of the city, they could be known by their dress to be members of the society, and that now they no longer use this peculiar dress, but were clothed like other people—for the purpose of showing an abandonment of the purposes of the society.

The peculiarity of their dress was, that when they came to the city of Rochester, the men wore blue cloth suits, somewhat old-fashioned, with tall hats with wide rims; and the women, blue silk dresses, differing from the fashions worn, and peculiar bonnets. This style of dress, and the change from it, is explained by the fact that formerly, when the members of the society were greater, they manufactured largely silk, cotton and woolen cloths, had tailors, dressmakers and hatters in the society, and had all their clothing made in Economy, of goods of their own manufacture. Their best suits, which they used when visiting the city, were generally made of blue cloth and blue silk. Their clothing, being of home manufacture, and they seldom leaving Economy, the style of their dress became old-fashioned and peculiar. Their manufacture of cloths of all kinds ceased in the sixties, and of hats somewhat later; and when the stock of goods they had left on hand became exhausted, their numbers had become reduced, and it became cheaper to purchase their clothing than to manufacture it themselves; and, by doing this, their dress became the same as that of other people, and all its peculiarities disappeared.

There is nothing in this change in their dress to show an abandonment of the purposes of the association.

All the other matters averred in the twenty-fifth and twenty-sixth paragraphs of the bill have been already considered.

Although there is no averment of it in the bill, and although the dissolution of the society, through the abandonment of the purposes for which it was founded, is alleged to have occurred within a recent period, it was argued for the plaintiffs that by the making of the agreement of 1836, declaring that all the property of the society "shall be deemed now and forever joint and indivisible s k," the principle of community of goods had ceased to exist, and was an abandonment of the purposes of the society; and also, that by the agreement of 1847, the patriarchal government was changed into that of a trading corporation, and was

an abandonment of the purposes of the society, which dissolved it.

If the contention of the plaintiffs is true, then the society became dissolved, and whatever rights in its property the plaintiffs, or those through whom they claim had, immediately vested upon the adoption of those agreements. But only the heirs of those who had not joined in them would have any right to complain; all others would be stopped by the act of their ancestor in joining in the agreements. There remain only the heirs of those who died in the society before the making of the agreements. If the making of agreements was such an abandonment of the purposes of the association as would cause its dissolution, their right to enforce that dissolution and to claim their share of its assets would accrue immediately. These agreements were entered into, the one seventy and the other fifty years ago. The plaintiffs have shown no cause for the delay in enforcing their rights. They have allowed the society to continue in existence and to carry on its business under these agreements for all these years, without making any claim or protest. The master is of opinion that, under the principles declared in the case of Spiedel v. Henrici, 120 U. S. R., 377, hereinbefore cited, such of them as might have had a right—if the plaintiff's contention is correct—are barred by their laches, and should not be allowed to enforce their claims at this late day.

The master, for the reasons hereinbefore set forth, finds that there has been no abandonment of the purposes for which the Harmony Society was founded, and that the said society has not been dissolved by reason of any such abandonment, and that the plaintiffs are not entitled to the relief prayed for in the bill; and respectfully recommends the annexed form of decree.

MASTER.

FORM OF DECREE.

And now, to-wit, 1898. This cause came on to be heard at this term of Court, upon bill, answer, testimony, and report of master and exceptions thereto, and was argued by counsel; and thereupon, upon consideration thereof, it is ordered, adjudged and decreed that the plaintiffs' bill be and is hereby dismissed, at their costs, including commissioner's and master's fees, said costs, however, to be paid in the first instance by the defendants.

EXCEPTIONS EX-PARTE PLAINTIFFS TO MASTER'S REPORT.

SCHWARTZ *et al.*
vs.
DUSS *et al.*

And now, March 31st, 1898, come Shiras & Dickey and S. Schoyer, Jr., attorneys for plaintiff, and file the following exceptions to the report of the master in the above entitled cause, reserving to themselves the right to hereafter file other and further exceptions.

First. To the recommendation for a decree and to the form of decree.

Second. Because the master has failed to find that, under the bill, answer and evidence, that the plaintiffs are entitled to the several reliefs prayed for in their bill, and in not recommending a decree therefor and a form of decree therefor.

Third. To so much of his report as finds that the plaintiffs have no interest whatever in the property of the society, and are not entitled to any part or share upon a dissolution.

Fourth. To so much of the master's report as holds that the agreements of 1805 and 1827 are substantially the same, and that a new plan of government by the agreement of 1847 was made necessary by the death of Rapp.

Fifth. The master erred in not finding that the agreement of 1847 destroyed the communism of the property and the patriarchal form of government provided in the agreements of 1805 and 1827, and substantially therefor a capitalistic system assimilated to the forms usually adopted for the management of capital and its employment for profit under the direction of a directory and presiding officers.

Sixth. The master erred in not finding that by the agreement of 1847, all who were then members of the society, and who afterwards became members of the society, became owners in and to an equal undivided share of all the property of the said society, real and personal, which by the agreement of 1847 was converted into a joint and indivisible fund, and that, therefore, upon the event of the dissolution of the association from any cause whatever, in the absence of provisions in that agreement for the distribution of said fund, the said joint and indivisible fund is to be distributed among all persons dying in the society, and the legal heirs and representatives of those who died in the society.

Seventh. The master erred in not finding that there was no joint tenancy with right of survivorship or tontine system provided

for by any of the agreements referred to in the testimony; and in not finding also, as a special fact, that none of the agreements made any provision for a winding-up of the affairs of the society, or for a distribution of its proceeds in the event of a dissolution of the said society.

Eighth. The master erred in applying the Pennsylvania cases, namely, the case of Shrieber *vs.* Rapp, 5th Watts, 351; and the case of Buehler *vs.* Gloninger, 2 Watts, 226; and the case of Nachtrieb *vs.* Harmony Society, as having no bearing upon any of the questions involved in this case, as all of the said decisions were made before the entering into the agreements of 1847.

Ninth. The master erred in finding that the plaintiffs, under the agreements hereinbefore referred to, have no claim on the property of the society through any of their ancestors.

Tenth. The master erred in holding that any inconsistency exists in the allegations of the 6th and 26th paragraphs of the plaintiff's bill, and says that the proper construction of the said 26th paragraph is that the trust is "contrary to public policy and void in law or equity."

Eleventh. The master erred in holding that the associates of George Rapp, in the original agreement of 1805, were named and ascertained by the deed of the 6th of May, 1815, and holding that the plaintiffs' objection as to perpetuities are unfounded.

Twelfth. The master erred in holding that the society as an unincorporated association had a right to take personal property.

Thirteenth. The master erred in holding that the plaintiffs are barred by time, assuming the legal inability of this society as an unincorporated association to take personal property.

Fourteenth. The master erred in assuming that there was no evidence of a conveyance to George Rapp or Frederick Rapp of the funds of the old society, but that they were purchased from outside persons; and also in his conclusion that if the trust was void, that the plaintiffs are not entitled to it, but that the same would revert to the grantors or go to the grantee clear of the trust.

Fifteenth. The master erred in finding that the various agreements did not create a limited or base fee; and also erred in not holding that the said agreements did create a limited and base fee.

Sixteenth. The master erred in finding that no resulting trust existed.

Seventeenth. The master erred in finding a sufficient and valuable consideration by the association to the members thereof for their interest in the property of the said association, because the said agreements disclosed a tenancy in common in the property of

an unincorporated association incapable of giving or receiving considerations as between the several tenants in common.

Eighteenth. The master erred in not holding that the scheme of the said association, as disclosed by its various agreements and its prevailing customs and methods, is against public policy, and therefore should be wound up, and the several reliefs prayed for in said bill should be granted.

Nineteenth. The master erred in finding that the Harmony Society has not been dissolved by the common consent of its members.

Twentieth. The master erred in finding that the Harmony Society had not been dissolved by the abandonment of the purposes for which it was founded.

Twenty-first. The master erred in finding that the abandonment of the purposes of the society, to cause a dissolution, must be an abandonment by *all* of its members.

Twenty-second. The master erred in finding that there was no conspiracy on the part of J. S. Duss to admit Dr. Cyrus Teed and the members of his Koreshan Society to membership in the Harmony Society, and to turn over to them all the property of the Harmony Society, as alleged in the 10th, 11th and 12th paragraphs of the bill.

Twenty-third. The master erred in finding that Duss was regularly and duly elected a member of the Economy Society according to the constitution and by-laws thereof.

Twenty-fourth. The master erred in finding that the remaining members of the Board of Elders, after the death of Kirschbaum, Wirth and Lenz, were not under the dominion and control of Duss.

Twenty-fifth. The master erred in finding the election of Duss, Nicklaus and Fischern to the Board of Elders was regular and valid.

Twenty-sixth. The master erred in finding that the large house at French Point was not built for Cyrus Teed or his society, as alleged in the 12th paragraph of the bill.

Twenty-seventh. The master erred in finding that Henry Feucht was not expelled from the society as the result of his active opposition and protest against the occupation of said house by the Teed Society, as alleged in the 12th paragraph, and because of his efforts to introduce reforms of abuses in the society, but that said expulsion was caused by the contumacious and intriguing acts on the part of Feucht.

Twenty-ninth. The master erred in finding that Duss did not prevent the admission of new members, as alleged in the 14th paragraph of the bill, and in not finding that the said Duss and his associates designedly permitted the membership of the society to

run down and diminish in order to vest the property of the society and the control thereof in himself and a few others under his control and dominion.

Thirtieth. The master erred in finding that the use of the funds of the society to the amount of over a million dollars was an authorized and proper application of said fund, and in finding that the same was not the result of a conspiracy between Duss, Hice and Reeves, as alleged by the 15th paragraph of the bill.

Thirty-first. The master erred in failing to find, as alleged in the 16th paragraph of the bill, that Duss and his confederates conspired to defraud plaintiffs and other members by executing the mortgage to Harry Darlington, trustee, of $400,000 upon the lands of the society.

Thirty-second. The master erred in finding that Henrici had full knowledge and comprehension of the terms of said mortgage and consented knowingly thereto, and that said consent and execution of the mortgage aforesaid was not made by Henrici when in *articulo mortis*, as alleged in the 16th paragraph.

Thirty-third. The master erred in finding that it was not the purpose of Duss *et al.*, by the foreclosure of the mortgage aforesaid, to obtain possession of the property mortgaged.

Thirty-fourth. The master erred in finding that the mortgage for $100,000 of May 1st, 1893, was within the powers conferred upon the trustees and was authorized by the agreement or instrument of December 20th, 1892. Exhibit No. 49.

Thirty-fifth. The master erred in not finding that the money represented by the foregoing mortgage was not raised for the purpose of raising money to induce members to retire, and that said money was so used; and in finding that the same was not borrowed for the purpose aforesaid.

Thirty-sixth. The master erred in finding that Duss did not, as charged in the 19th paragraph of the bill, by artifice, misrepresentation, coercion and fraud, induce or force all the active and more intelligent members of the society to withdraw, and that he did not secretly and fraudulently appropriate several hundred thousand dollars of the moneys of the society and use it in getting rid of these members.

Thirty-seventh. The master erred in finding that the payments to the retiring members were not made secretly, and that the same were within the powers of the trustees.

Thirty-eighth. The master erred in finding that Duss protested against the withdrawal of the retiring members, and that the withdrawal of these members was not caused by any scheme or action

of Duss, but by the filing of the Feucht bill against the society and the action of the plaintiff's in that bill prior to and after it was filed.

Thirty-ninth. The master erred in not finding that the withdrawal of retiring members was caused by the offers of money made by Duss and by threats and coercions used by him.

Fortieth. The master erred in finding that the averments of the 19th paragraph of the bill, in regard to the election of women to the Board of Elders, and the purposes for which the same was done are not sustained.

Forty-first. The master erred in sustaining the allegations contained in the 20th paragraph of the bill in relation to the conveyance to the Union Land Company.

Forty-second. The master erred in finding that the conveyance to the Union Company did not work a dissolution of the society, and that the same did not wholly terminate the existence of said society, not only as to the government thereof by the Board of Elders and by the members, but also as to the ownership of any property.

Forty-third. The Master erred in finding that said conveyance was within the powers and the authority of the trustees or the terms of the trust upon which they held the same.

Forty-fourth. The master erred in finding that the allegations of the 21st paragraph of the bill, which charges that Duss, for the purpose of winding up and dissolving the society, is endeavoring to compel the remaining members to depart by means of intimidation and oppression, are not sustained.

Forty-fifth. The master erred in finding that the charge of intimidation, oppression and cruel conduct on the part of Duss, as made in the 21st paragraph of said bill is not sustained.

Forty-sixth. The master erred in finding that the principle of equality and community of goods had not been abandoned, as charged in the 23rd paragraph of the bill.

Forty-seventh. The master erred in not sustaining the allegations of the 24th paragraph of the bill in regard to bad moral character of Duss, and in finding that he was not a man of bad moral character, and that he had not been guilty of the offense charged with Fredericka R. Kroll.

Forty-eighth. The master erred in excluding the offer of the record of the conviction and sentence of Weggle in the United States District Court, showing his conviction for perjury in the recantation of his testimony charging Duss with the commission of said offense with the said Fredericka R. Kroll.

Forty-ninth. The master erred in finding that the doctrine and

practice of celibacy had never been one of the essential principles or doctrines of the society.

Fiftieth. The master erred in treating the various acts alleged by the plaintiff as constituting dissolution of the society separately, and in not considering and passing upon the united effect of all said acts and matters, and in failing to find that the same, when taken collectively, would constitute a dissolution of the society or an abandonment of the purposes of the society.

Fifty-first. The master erred in placing the costs on the plaintiffs.

SHIRAS & DICKEY,
S. SCHOYER, JR.

SUR EXAMINER'S CERTIFICATE WITH RESPECT TO THE EXAMINATION OF THE WITNESS, JOHN S. DUSS.

ACHESON, *Circuit Judge.*

1. Whether or not the witness, John S. Duss, is to be regarded "as if under cross-examination," or as called generally by the plaintiffs it is not necessary now to decide. The effect to be given to his testimony will be determined hereafter. As he is manifestly adverse to the parties who have put him on the stand, they may interrogate him as a hostile witness.

2. Under the pleadings, it would strictly speaking be more regular for the plaintiffs in the first instance to show their proprietary interest in the estate and assets which are the subject matter of the bill and their right to an accounting, or to other relief based on ownership. But the Court will not prescribe the rigid observance of that order of proof. Some discretionary latitude should be accorded to the plaintiff's counsel as to the order in which the evidence shall be produced. They are, therefore, at liberty at this time to examine the witness as to the alleged dissolution of the Harmony Society, either by the common consent of its members or by the abandonment of the purposes for which it was founded; and also to show by him the plaintiffs' proprietary interest and right to the accounting prayed for. But with the alleged breaches of trust by Duss, as trustee of the Harmony Society or with his alleged personal misconduct the plaintiffs have no concern, unless they really have a proprietary title. It would, therefore, be premature and might be a sheer waste of time to take testimony in relation to those matters, until the plaintiffs have made out a *prima facie* case of ownership. When they shall have produced evidence tending to show their right to an ac-

count they will be permitted to examine Duss without restriction. In the meantime, his examination should be confined within the limits above indicated.

The plaintiffs, however, are at liberty (as are the defendants also) to apply to the Court during the progress of the examination for further instructions to the examiner.

And it is so ordered.

OPINION.

ACHESON, *Circuit Judge*:

The plaintiffs sue as heirs of certain persons who were formerly members of the Harmony Society, and who continued to be members until their voluntary withdrawal or death. The bill is against all the persons who composed the society at the commencement of the suit, namely, June 27th, 1894, the membership then embracing sixteen persons. The bill joins as co-defendants with the members of the Harmony Society Henry Hice, John Reeves and the Union Company, a corporation, the bill charging that these three defendants and the defendant John S. Duss, a member of the society and the Senior Trustee thereof, were acting together in a conspiracy to wreck and dismember the society and appropriate to themselves the entire assets of the society. The bill further alleges that all the purposes for which the society was founded and its established practices had been abandoned, and that by common consent the society had ceased to exist as an association and had been dissolved, and that "the assets of such dissolved association have reverted to the donors thereof, among whom were the ancestors and intestates of the plaintiffs. The bill prays for the appointment of a receiver and for the division and distribution of the assets of the society amongst the persons legally entitled thereto, including the plaintiffs. All the defendants have answered the bill. In their answers they all deny the above recited charges and allegations and all the averments in the bill upon which the plaintiffs' supposed right to relief rests; and they also deny that the plaintiffs have any interest whatever in the property of the Harmony Society or any right to intermeddle with its affairs.

After the cause was at issue the parties thereto entered into and filed a written agreement whereby they stipulated "to request the Court to appoint W. W. Thompson, Esq., as Examiner and

Master in this case; that to said Thompson shall be given as Examiner and Master the authority to hear and take all the testimony and to find all the issues of law and facts, and to report the testimony and such findings to the Court; * * * the parties reserving the right to be heard before this Court on exceptions to such findings, and reserving the right of each to take appeals from the decree, decision and judgment of this Court therein to the proper appellate Court with the same force and effect as though this cause had been decided by the Court below withuot the intervention of a master." And thereupon, at the request of all parties to the suit, the Court appointed Mr. Thompson Examiner and Master in the cause, with the authority specified in the said agreement.

In conformity with the agreement of the parties and pursuant to the order of appointing him, the master took a large amount of testimony and made findings, which are embodied in a written report to the Court. The master filed with his report the testimony and exceptions taken by the plaintiffs to his findings.

The cause has been heard upon the pleadings and evidence, the master's report and the exceptions thereto.

The report of the master is altogether adverse to the plaintiffs. He finds that the charges of conspiracy and misconduct and the allegations of abandonment of the purposes and established practices of the Harmony Society and of the dissolution of the society contained in the bill are not sustained by the evidence, and that they are not true. Upon every material question of fact the finding of the master is distinctly in favor of the defendants, and he recommends the dismissal of the bill.

The master's report covers the entire case, and evinces the most careful consideration of every question here raised. Nevertheless, the Court has felt it to be its duty to make an independent investigation of the facts and merits of the case; and therefore we have attentively read and considered the whole of the evidence. Avoiding, as needless, a particular discussion of the numerous exceptions to the master's report, we will briefly state our general views and conclusions.

The constitution of the Harmony Society is embodied and the general purposes of the association are set forth in a series of written agreements, executed in the years 1805, 1821, 1827, 1836, 1847 and 1890. These agreements were signed at their respective dates by all the then members of the society. By the agreement of 1805 the doctrine of community of property became and by the subsequent agreements continues to be a fundamental

principle of the society. Its acceptance is an essential condition of membership. By the constitution of the society individual ownership of property is renounced in favor of the community or society. The members have all things in common, and each is entitled to receive from the society necessary maintenance, support and education, and in return each is bound to render to the society labor and obedience. The agreement of 1827 contained a provision, that if any member withdrew from the society there should be refunded to him the value, without interest, of all the property he had brought into the community. The agreement of 1836, however, rescinded that provision wholly, and stipulated that if any individual shall withdraw from the society or depart this life, neither he in the one case nor his representatives in the other shall be entitled to demand an account of his contributions, whether in lands, goods, money or labor, or to claim anything from the society as matter of right; but that it shall be left altogether to the discretion of the superintendent to decide whether any, and if any, what allowance shall be made to such member or his representatives as a donation.

In view of the decision of the Supreme Court of Pennsylvania in *Schriber vs. Rapp*, 5 Watts, 351, and the decisions of the Supreme Court of the United States in *Goesele et al. vs. Bimeler et al.*, 14 How., 589, and *Baker et al. vs. Nachtrieb*, 19 How., 126, it is clear that the above recited articles of agreement are valid contracts, and that thereunder, upon the death of a member of the society in fellowship, no claim enforcible against the society or its property passes to his heirs or personal representatives, and that since 1836 no member voluntarily withdrawing from the society could acquire any such claim.

Now, not one of the plaintiffs was ever a member of the Harmony Society. Furthermore, it does not appear that any of the persons through whom the plaintiffs claim, contributed any money or property to the Society. The master has found that no such contribution was ever made by any of those persons. The correctness of that finding has not been impeached. All the members through whom the plaintiffs claim who left the society, withdrew in or before the year 1827. Presumably they retired upon terms satisfactory to themselves. If, however, those persons so withdrawing had any legal demands against the society, those demands have been barred by lapse of time. *Speidel vs. Henrici*, 120 U. S., 377. The other persons through whom the plaintiffs claim remained with the society and died in fellowship. They thus received and enjoyed all the benefits secured to them

by the recited articles of agreement, and therefore, no rights enforcible against the society passed from them to their heirs or personal representatives.

The soundness of the view that the deceased ancestors and the collateral relatives of the plaintiffs could transmit to them no rights enforcible against the Harmony Society as a living organization is impliedly conceded by the bill, for it alleges that the society has come to an end. The bill proceeds upon the theory that a dissolution of the society has been brought about. Upon this assumption, and under the allegation "that recently said Harmony Society has become dissolved as aforesaid;" the bill prays that the Court take charge of the assets of the society and distribute the same amongst the parties legally and equitably entitled thereto.

But the hypothesis of dissolution is not well founded. The proofs show that the society is in full life. There has been no dissolution of the society either by the common consent of the members or by their acts. The membership, indeed, has become greatly reduced, but the rights of the society as now constituted are as sacred in the eye of the law as they were when the membership was twentyfold greater. The society as an organization exists in law and in fact. Under the evidence the findings of the master upon this branch of the case undoubtedly are right. Hence the very foundation of the bill fails. The plaintiffs do not show that they are entitled to any equitable relief whatever.

It is not necessary, nor would it be proper, for the Court to express any opinion as to what would be the legal status and the ultimate disposition of the property of the Harmony Society were its existence terminated by the death of all its members, or were a dissolution of the society otherwise effected. No such questions are before us. We are not dealing with the assets of a defunct or dissolved association.

In respect to the alleged conspiracy to wreck and dismember the Harmony Society, we feel called upon to say that we fully agree with the conclusion of the master. The acts here principally complained of were, we think, designed not to destroy the society, but to save it from the consequences of business mistakes made by none of the present officers or members of the society and for which none of them are at all responsible. The measures resorted to in the emergency which was upon the society were successful in extricating it from great financial peril. Those measures were adopted and carried out under the advice of eminent counsel, whose rectitude of purpose the Court cannot doubt.

And now before closing we deem it to be our duty to declare that after the most careful scrutiny of the evidence it is our judgment that the charges of immorality made against John S. Duss, the Senior Trustee, in the twenty-fourth paragraph of the bill, are not sustained by the evidence, but are disproved.

The general rule in equity that costs follow the decree, we think, should be applied here under the circumstances. *Stoetzel vs. Penn Bank*, 147 Pa. 140, 154. The bill alleges conspiracy, fraud and immorality, and these grave charges have not been withdrawn. Having successfully vindicated themselves from these charges the defendants are justly entitled to full costs.

DECREE.

This cause came on to be heard at this term of the Court upon the pleadings and evidence, and the report of the master and exceptions thereto, and was argued by counsel. And now this thirteenth day of February, 1899, upon consideration, it is ordered, adjudged and decreed that the plaintiffs' bill be and the same is hereby dismissed; and it is further ordered, adjudged and decreed that the plaintiffs pay the costs, including the master's fee to be fixed *sec. reg.*, and which, together with his compensation as examiner, shall be paid to the master in the first instance by the defendants.

BY THE COURT.

PETITION FOR APPEAL AND ASSIGNMENTS OF ERROR.

To the Honorable, the Judges of the said Court:

The petition of Antony Koterba, David Strohaker and Allen Shale, on behalf of themselves and of the other plaintiffs in the said case, respectively shows:

That they consider themselves aggrieved by the decree of the Circuit Court of the United States for the Western District of Pennsylvania entered in the above cause on the 13th day of February, 1899, and it hereby appeals to the Circut Court of Appeals for the United States for the Third Circuit from the said decree and assign for error the following:

First. The Court erred in not entering a decree in favor of the plaintiffs and in entering a decree in favor of the defendants.

Second. The Court further erred in charging the plaintiffs with the costs of the said bill.

Third. The Court erred in entering the following decree:

"DECREE."

"This cause came on to be heard at this term of Court upon the pleadings and evidence and the report of the master and exceptions thereto and was argued by counsel;

"And now, this thirteenth day of February, 1899, upon consideration it is ordered, adjudged and decreed that the plaintiffs' bill be and the same is hereby dismissed; and it is further ordered, adjudged and decreed that the plaintiffs pay the costs, including the master's fees to be fixed *sec. reg.*, and which, together with his compensation as examiner, shall be paid to the master in the first instance by the defendants.

BY THE COURT.

Fourth. The Court erred in its opinion in stating: "The constitution of the Harmony Society is embodied and the general purposes of the association are set forth in a series of written agreements," and including therein the agreement of 1890 (see Exhibit "F," Record p. 67).

Fifth. The Court further erred in holding in its opinion filed that the "recited articles of agreement are valid contracts."

Sixth. The Court below further erred in its opinion as follows:

> "Furthermore, it does not appear that any of the persons through whom the plaintiffs claim contributed any money or property to the society. The master has found that no such contribution was ever made by any of those persons. The correctness of that finding has not been impeached."

Seventh. The Court below further erred in asserting as follows:

> "The other persons through whom the plaintiffs claim remained with the society and died in fellowship; thus they received and enjoyed all the benefits secured to them by the recited articles of agreement; and therefore no rights enforceable against the society passed from them to their heirs or personal representatives."

Eighth. The Court below further erred in its opinion in asserting as follows:

> "But the hypothesis of dissolution is not well founded. The proofs show that the society is in full life; there has been no dissolution of the society either by the common consent of the members or by their acts. The membership indeed has become greatly reduced; but the rights of the society as now constituted are as sacred in the

eye of the law as they were when the membership was twenty-fold greater. The society as an organization exists in law and in fact. Under the evidence the findings of the master on this branch of the case undoubtedly are right; hence the very foundation of the bill fails. The plaintiffs do not show that they are entitled to any equitable relief whatever."

Ninth. The Court below further erred in its opinion in holding as follows in respect to the alleged conspiracy to wreck and dismember the Harmony Society:

"We feel called upon to say that we fully agree with the conclusion of the master. The acts here principally complained of were, we think, designed not to destroy the society but to save it from the consequences of business mistakes made by none of the present officers or members of the society, and for which none of them are at all responsible. The measures resorted to in the emergency which was upon the society were successful in extricating it from great financial peril."

Tenth. The Court below further erred in sustaining the report of the master in overruling the exceptions filed thereto by the plaintiffs, as follows:

"Third. To so much of his report as finds that the plaintiffs have no interest whatever in the property of the society, and are not entitled to any part or share upon a dissolution."

Eleventh. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

"Fourth. To so much of the master's report as holds that the agreements of 1805 and 1827 are substantially the same: and that a new plan of government by the agreement of 1847 was made necessary by the death of Rapp."

Twelfth. The Court below further erred in overruling the following exceptions of the plaintiffs to the report of the master:

"Fifth. The master erred in not finding that the agreement of 1847 destroyed the communism of the property and the patriarchial form of government provided in the agreements of 1805 and 1827, and substituted therefor a capitalistic system assimilated to the forms usually adopted for the management of capital and its employment for profit under the direction of a directory and presiding officers."

Thirteenth. The Court below further erred in not sustaining the following exceptions of plaintiffs to the report of the master:

> "Sixth. The master erred in not finding that by the agreement of 1847 all who were then members of the society and who afterwards became members of the society became owners in and to an equal undivided share of all the property of the said society, real and personal, which by the agreement of 1847 was converted into a joint and indivisible fund and that, therefore, upon the event of the dissolution of the association from any cause whatever in the absence of provisions in that agreement for the distribution of said fund, the joint and indivisible fund is to be distributed among all persons dying in the society and the legal heirs and representatives of those who died in the society."

Fourteenth. The Court below further erred in overruling the following exception of plaintiffs to the master's report:

> "Seventh. The master erred in not finding that there was no joint tenancy with right of survivorship or tontine system provided for by any of the agreements referred to in the testimony; and in not finding also as a special fact that none of the agreements made any provision for a winding up of the affairs of the society or for a distribution of its proceeds in the event of a dissolution of the said society."

Fifteenth. The Court below further erred in overruling the following exception of plaintiffs to the report of the master:

> "Ninth. The master erred in finding that the plaintiffs under the agreements hereinbefore referred to have no claim on the property of the society through any of their ancestors."

Sixteenth. The Court below further erred in overruling the following exception of the plaintiffs to the report of the master:

> "Tenth. The master erred in holding that any inconsistency exists in the allegations of the 6th and 26th paragraphs of the plaintiffs' bill, and says that the proper construction of the said 26th paragraph is that the trust is 'contrary to public policy and void in law or equity.'"

Seventeenth. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

> "Eleventh. The master erred in holding that the associates of George Rapp, in the original agreement of 1805, were named and ascertained by the deed of the

6th of May, 1815; and holding that the plaintiffs' objection as to perpetuities are unfounded."

Eighteenth. The Court below further erred in overruling the following exception of the plaintiffs to the master's report.

"Twelfth. The master erred in holding that the society as an incorporated association had a right to take personal property."

Nineteenth. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

"Thirteenth. The master erred in holding that the plaintiffs are barred by time assuming the legal inability of this society as an unincorporated association to take personal property."

Twentieth. The Court below further erred in overruling the following exception of the plaintiffs to the master's report.

"Fourteenth. The master erred in assuming that there was no evidence of a conveyance to George Rapp or Frederick Rapp of the funds of the old society but that they were purchased from outside persons; and also in his conclusion that if the trust was void that the plaintiffs are not entitled to it but that the same would revert to the grantors or go to the grantee clear of the trust."

Twenty-first. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

"Fifteenth. The master erred in finding that the various agreements did not create a limited or base fee; and also erred in not holding that the said agreements did create a limited or base fee."

Twenty-second. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

"Sixteenth. The master erred in finding that no resulting trust existed."

Twenty-third. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

"Seventeenth. The master erred in finding a sufficient and valuable consideration by the association to the members thereof for their interest in the property of the said association because the said agreements disclosed a tenancy in common in the property of an unincorporated association incapable of giving or receiving considerations as between the several tenants in common."

Twenty-fourth. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

> "Eighteenth. The master erred in not holding that the scheme of the said association as disclosed by its various agreements and its prevailing customs and methods is against public policy, and therefore should be wound up, and the several reliefs prayed for in said bill should be granted."

Twenty-fifth. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

> "Nineteenth. The master erred in finding that the Harmony Society has not been dissolved by the common consent of its members."

Twenty-sixth. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

> "Twentieth. The master erred in finding that the Harmony Society had not been dissolved by the abandonment of the purposes for which it was founded."

Twenty-seventh. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

> "Twenty-first. The master erred in finding that the abandonment of the purposes of the society to cause a dissolution must be an abandonment by all of its members."

Twenty-eighth. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

> "Twenty-second. The master erred in finding that there was no conspiracy on the part of J. S. Duss to admit Dr. Cyrus Teed and the members of his Koreshan Society to membership in the Harmony Society, and to turn over to them all the property of the Harmony Society as alleged in the 10th, 11th and 12th paragraphs of the bill."

Twenty-ninth. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

> "Twenty-third. The master erred in finding that Duss was regularly and duly elected a member of the Harmony Society according to the constitution and by-laws thereof."

Thirtieth. The Court below further erred in overruling the following exception of the plaintiffs to the masters' report:

> "Twenty-fourth. The master erred in finding that the remaining members of the Board of Elders after the death

of Kirschbaum, Wirth and Lenz were not under the dominion and control of Duss."

Thirty-first. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

"Twenty-fifth. The master erred in finding the election of Duss, Nicklaus and Fischern to the Board of Directors was regular and valid."

Thirty-second. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

"Twenty-ninth. The master erred in finding that Duss did not prevent the admission of new members, as alleged in the fourteenth paragraph of the bill, and in not finding that the said Duss and his associates designedly permitted the membership of the society to run down and diminish in order to vest the property of the society and the control thereof in himself and a few others under his control and dominion."

Thirty-third. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

"Thirtieth. The master erred in finding that the use of the funds of the society to the amount of over a million dollars was an authorized and proper application of said fund, and in finding that the same was not the result of a conspiracy between Duss, Hice and Reeves, as alleged by the 15th paragraph of the bill."

Thirty-fourth. The Court below further erred in overruling the following exception of the plaintiffs to the Master's report:

"Thirty-first. The master erred in failing to find, as alleged in the 16th paragraph of the bill, that Duss and his confederates conspired to defraud plaintiffs and other members by executing the mortgage to Harry Darlington, trustee, of $400,000 upon the lands of the society."

Thirty-fifth. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

"Thirty-second. The master erred in finding that Henrici had full knowledge and comprehension of the terms of said mortgage, and consented knowingly thereto, and that said consent and execution of the mortgage aforesaid was not made by Henrici when in *articulo mortis*, as alleged in the 16th paragraph."

Thirty-sixth. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

"Thirty-fourth. The master erred in finding that the mortgage for $100,000 of May 1st, 1893, was within

the powers conferred upon the trustees, and was authorized by the agreement or instrument of December 20th, 1882, Exhibit No. 491."

Thirty-seventh. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

"Thirty-fifth. The master erred in not finding that the money represented by the foregoing mortgage was not raised for the purpose of raising money to induce members to retire, and that said money was so used; and in finding that the same was not borrowed for the purpose aforesaid."

Thirty-eighth. The Court below further erred in overuling the following exception of the plaintiffs to the master's report:

"Thirty-sixth. The master erred in finding that Duss did not, as charged in the 19th paragraph of the bill, by artifice, misrepresentation, coercion and fraud induce or force all the active and more intelligent members of the society to withdraw, and that he did not secretly and fraudulently appropriate several hundred thousand dollars of the moneys of the society and use it in getting rid of these members."

Thirty-ninth. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

"Thirty-seventh. The master erred in finding that the payments to the retiring members were not made secretly, and that the same were within the power of the trustees."

Fortieth. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

"Thirty-eighth. The master erred in finding that Duss protested against the withdrawal of the retiring members, and that the withdrawal of these members was not caused by any scheme or action of Duss, but by the filing of the Feucht bill against the society, and the actions of the plaintiffs in that bill prior to and after it was filed."

Forty-first. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

"Thirty-ninth. The master erred in not finding that the withdrawal of retiring members was caused by the offers of money made by Duss and by threats and coercions used by him."

Forty-second. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

"Fortieth. The master erred in finding that the averments of the 19th paragraph of the bill in regard to the

election of women to the Board of Elders, and the purposes for which the same was done are not sustained."

Forty-third. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

"Forty-first. The master erred in sustaining the allegations contained in the 20th paragraph of the bill in relation to the conveyance to the Union Land Company."

Forty-four. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

"Forty-second. The master erred in finding that the conveyance to the Union Land Company did not work a dissolution of the society, and that the same did not wholly terminate the existence of said society, not only as to the government thereof by the Board of Elders and by the members, but also as to the ownership of any property."

Forty-fifth. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

"Forty-third. The master erred in finding that said conveyance was within the powers and the authority of the trustees or the terms of the trust upon which they held the same."

Forty-sixth. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

"Forty-sixth. The master erred in finding that the principle of equality and community of goods had not been abandoned, as charged in the 23rd paragraph of the bill."

Forty-seventh. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

"Forty-ninth. The master erred in finding that the doctrine and practice of celibacy had never been one of the essential principles or doctrines of the society."

Forty-eighth. The Court below further erred in overruling the following exception of the plaintiffs to the master's report:

"Fiftieth. The master erred in treating the various acts alleged by the plaintiff as constituting dissolution of the society separately, and in not considering and passing upon the united effect of all said acts and matters, and in failing to find that the same, when taken collectively, would constitute a dissolution of the society or an abandonment of the purposes of the society."

Appellants therefore pray that the said decree of the Court below may be reversed and set aside, and that a decree of the said

Circuit Court of Appeals may be entered in favor of these appellants as prayed for in the bill.

SHIRAS & DICKEY,
Counsel for Appellants.
S. SCHOYER, JR.,
for Appellants.

And now, August 9, 1899, the within petition for appeal presented by Shiras & Dickey and S. Schoyer, Jr., the appeal prayed for is allowed and bond in $1,000 to be given with surety to be affirmed by this Court.

M. W. ACHESON,
Circuit Court.
SHIRAS & DICKEY,
S. SCHOYER, JR.

BOND.

Know all men by these presents, that we, Antony Koterba, David Strohaker and Allen Shale, of the County of Columbiana, State of Ohio; B. C. Henning and G. W. Donaghy, of the County of Allegheny, State of Pennsylvania, are held and firmly bound unto John S. Duss, Gottlieb Riethmueller, Franz Gillman, Conrad Hermansdoerfer, Edward Kellerman, Johanna Hermansdoerfer, Susie C. Duss, Karolina Molt, Katrina Nagel, Elizabeth Beck, Maria Diem, Barbara Boesch, Fredericka Muntz, Dorothea Hoehr, Regina Lautenschlager, and Christina Rall, Henry Hice, John Reeves and The Union Company, defendants in the above entitled cause, in the sum of one thousand dollars, to be paid to the said obligees, their certain attorneys or assigns.

To which payment well and truly to be made we, and every one of us, do bind ourselves, our heirs, executors and administrators, firmly by these presents.

Sealed with our seals. Dated the 9th day of August, A. D. one thousand eight hundred and ninety-nine.

WHEREAS, the above named Antony Koterba, David Strohaker and Allen Shale have prosecuted an appeal to the United States Circuit Court of Appeals for the Third Circuit to reverse the decree rendered in the above entitled suit, by the Circuit Court of the United States for the Western District of Pennsylvania.

Now, the condition of this obligation is such that if the above named, Antony Koterba, David Strohaker and Allen Shale, shall prosecute said appeal to effect and answer all costs of said appeal;

if he fail to make the same good, then this obligation shall be void; otherwise to be and remain in full force and virtue.

Sealed and delivered in the presence of

DAVID STROHAKER, [SEAL]
ALLEN SHALE, [SEAL]
ANTONY KOTERBA, [SEAL]
B. C. HENNING, [SEAL]
G. W. DONAGHY. [SEAL]

Witness:

HARVEY FELGER,
GEORGE GOLDNER,
GEO. H. CALVERT,
as to Henning & Donaghy.

STATE OF PENNSYLVANIA, }
COUNTY OF ALLEGHENY, } *ss.*

Personally before me came B. C. Henning and G. W. Donaghy, the above named surities, who, being duly sworn, do depose and say that they are each worth the amount of the penalty of said bond, over and above their debts and liabilities and exemptions.

B. C. HENNING,
G. W. DONAGHY.

Sworn and subscribed the 9th day of August, A. D. 1899.

GEORGE H. CALVERT,
[SEAL] *Notary Public.*

And now, August 9th, 1899, the within bond approved.

M. W. ACHESON,
Circuit Judge.

CITATION.

UNITED STATES OF AMERICA, }
WESTERN DISTRICT OF PENNSYLVANIA, } *ss.*

To John S. Duss, Franz Gillman, Johanna Hermansdoerfer, Susie C. Duss, Karoline Molt, Katrina Nagel, Barbara Boesch, Fredericka Muntz, Christina Rall, Henry Hice and John Reeves, and The Union Company.

GREETING:—You and each of you are hereby cited and admonished to be and appear at a session of the United States Circuit

Court of Appeals, for the Third Circuit, to be holden at Philadelphia, in said Circuit, on the 8th day of September, 1899, persuant to an appeal filed in the Clerk's Office of the Circuit Court of the United States for the Western District of Pennsylvania, wherein Christian Schwartz, Antony Koterba, David Strohaker, Allen Shale and G. L. Shale are appellants, and you are the appellees, to show cause, if any there be, why the decree rendered against the said appellants, as in the said appeal mentioned, should not be corrected and speedy justice done to the parties in that behalf.

Witness my hand this 9th day of August, A. D. 1899.

M. W. ACHESON,
Circuit Judge.

Service of above citation accepted this August 11th, 1899.

C. S. FETTERMAN,
Of Attorneys for Appellees.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

THIRD CIRCUIT.

July 10th, 1900.

CHRISTIAN SCHWARTZ *et al.*,
Appellants.
vs.
JOHN S. DUSS *et al.*,

Appeal from the Circuit Court of the United States for the Western District of Pennsylvania.

OPINION OF THE COURT.

GRAY, J.

This is an appeal from the decree of the Circuit Court for the Western District of Pennsylvania. The plaintiffs below, appellants here, seek in this suit to recover a portion of the property of the Harmony Society, which they allege is defunct, and claim that its property ought to be distributed among those entitled thereto.

In the year 1803 George Rapp and his son John and several of their friends left the Kingdom of Wurtemburg, came to the United States, and located at a place called Harmony, in Butler County, Pennsylvania, where they were joined by a considerable

number of other emigrants. They remained there until the year 1814, when they removed to Posey County, Indiana, where they remained until the year 1825, when, becoming dissatisfied, they moved back to Pennsylvania, and located at Economy in Beaver County, Pennsylvania, where they have ever since resided.

They formed a society or an association called "The Harmony Society," and in 1805 they made the first written contract between them.

That the said society was organized upon the principle of community of goods and land ownership. The members of the said society who had brought with them from Wurtemburg, money, combined their funds and held all their property in common, they lived as members of a common household, and each member enjoying alike with every other, the fruits of their common labor in equality and brotherhood. The occupation or business of the said society was agriculture, except in so far as it was necessary to manufacture shoes, clothing and other necessaries for the community. The members of the said society obeyed George Rapp as their spiritual and temporal leader and ruler.

The only laws and rules governing the said society were made by him, the members thereof having no voice in their enactment.

About the year 1807 the community promulgated the doctrine of celibacy as being necessary for the success of a communistic society.

The agreement of 1805, Exhibit "A," p. 47, Vol. 1 Record, is as follows:

"Be it hereby known to all who need to know that the following agreement has this day been made and concluded between us, the subscribers of the one part and George Rapp and his associates of the other part:

"ARTICLE 1. We the subscribers on our part and on the part of our heirs and descendants deliver up, renounce and remit all our estate and property consisting of cash, land and chattels, or whatever it may be, to George Rapp and his associates in Harmony, Butler County, Pennsylvania, as a free gift or donation for the benefit and use of the community there, and bind ourselves on our part as well as on the part of our heirs and descendants to make free renunciation thereof, and to leave the same at the disposal of the superintendents of the community, as if we had never had or possessed it.

"ARTICLE 2. We pledge ourselves jointly and severally to submit to the laws and regulations of the community, and to show due and ready obedience toward those who are appointed and

chosen by the community as superintendents in such manner that not only we ourselves endeavor by the labor of our hands, to promote the good and interest of the community, but also to hold our children and families to do the same.

"ARTICLE 3. If, contrary to our expectation, the case should happen, and we jointly or severally could not stand to it in the community, and we would within a few or more years break our promises and withdraw from the community, for whatever cause it may be, never to demand any reward, either for ourselves or children, or those belonging to us for any of our labors or services rendered, but whatever we jointly and severally shall or may do, we will have all done as a voluntary service for our brethren.

"In consideration whereof George Rapp and his associates adopt the subscribers jointly and severally as members of the community, whereby each of them obtains the privilege to be present at each religious meeting; not only they themselves but also their children and families, shall and will receive the same necessary instructions in church and school which is needful and requisite for their temporal good and welfare as well as eternal felicity.

"ARTICLE 4. George Rapp and his associates promise to supply the subscribers jointly and severally with all the necessaries of life, as lodging, meat, drink and clothing, etc., and not only during their healthful days, but also when one or more of them become sick or otherwise unfit for labor, they shall have and enjoy the same support and maintenance as before; and if, after a short or long period the father or mother of a family should die, or be otherwise departed from the community, and leave a family behind, they shall not be left widows or orphans, but partakers of the same rights and maintenance as long as they live or remain in the community, as well in sick as healthful days, the same as before, or as circumstances or necessity may require.

"ARTICLE 5. And if the case should happen as above stated that one or more of the subscribers after a short or long period should break their promise and could or would not submit to the laws and regulations of the church or community, and for that or any other cause would leave Harmony, George Rapp and his associates promise to refund him or them the value of his or their property brought in without interest, in one, two, or three annual installments, as the sum may be, large or small; and if one or more of them were poor and brought nothing into the community, they shall, provided they depart openly and orderly, receive a donation of money, according to his or their conduct while a

member, or as he or their circumstances and necessities may require, which George Rapp and his associates shall determine at his or their departure.

"In confirmation whereof both parties have signed their names.

"Done in Harmony, February 15th, 1805."

They became the owners of about seven thousand acres of land at Harmony, Butler County, which on May 6th, 1815 was conveyed by Frederick Rapp, as their attorney in fact to Abraham Zeigler for the consideration of $100,000.

And in that year or in 1814 the society removed from Butler County, Pennsylvania, to Posey County, State of Indiana, where in 1821 a second agreement with each other in German was entered into by them.

In 1825 the society removed from Indiana to Beaver County, Pennsylvania, where they purchased and settled upon a tract of land containing about 3,000 acres, now known as "Economy," where they have since remained, and which has since become very valuable, and on which they have erected many buildings including dwellings and factories of various kinds, and made many valuable improvements.

After the settlement at Economy in 1827, another agreement was entered into and signed by all of the then members of the association.

This agreement is substantially the same as the agreement of 1805, in so far as it relates to the rights and duties of the members of the society. It had, however, in it a stipulation constituting the sixth article, that the society would refund to any member who, for any reason should withdraw therefrom, "the value of all such property as he or they may have brought into the community, in compliance with the first article of this agreement." And if the persons withdrawing were poor and brought nothing into the community, they should, nevertheless, receive a donation of money according to the length of their stay, and to their conduct and necessities in the judgment of the superintendent of the association. In 1836, owing to troubles occasioned by a secession of members, it was deemed wise to abrogate this article, and accordingly an agreement supplementary to that of 1827 was entered into by all of the then members of the community in which "the principal of restoration of property" was, for reasons stated, renounced, and the said sixth article of the agreement of 1827 was expressly and entirely "annulled and made void as if it had never existed" all other articles remaining "in

full force as heretofore." This supplementary agreement then provided as follows: "2nd. All the property of the society, real, personal and mixed, in law or equity and howsoever contributed or acquired shall be deemed, now and forever joint and indivisible stock."

Each individual is to be considered to have finally and irrevocably parted with all his former contributions, whether in land, goods, money or labor; and the same rule shall apply to all future contributions whatever they may be. "3rd. Should any individual withdraw from the society, or depart this life, neither he in the one case nor his representatives in the other shall be entitled to demand on account of said contributions, whether in land, goods, money or labor, or to claim anything from the society as a matter of right. But it shall be left altogether to the discretion of the superintendent, to decide whether any, and if any, what allowance shall be made to such member, or his representatives as a donation."

After the death of George Rapp in 1847, and in that year, another agreement was entered into by them, the then members of the society, confirming the agreements of 1827 and 1836, except so far as the same were affected by the death of the said George Rapp, and providing for a different scheme of administration. the executive powers which had heretofore been mainly exercised by the said Rapp, were vested in a board of nine elders, to be chosen as therein provided.

The agreements of 1827, 1836 and 1847 are those under which, or some of which, the plaintiffs claim the right to share in the property and assets of the society, as heirs of former members. The bill alleges that the complainants were heirs and next of kin of those who either were members of the society and withdrew from the same before the execution of the agreement of 1836, or of those dying in the society before that time, or of those who died members of the society after having joined in the agreements of 1834 and 1847.

The bill alleges that the defendant, John Duss, with others entered into a conspiracy, on more than one occasion, to wreck the society and take to himself and his co-conspirators the property and assets of the same. The bill further alleges that there has been prior to and up to the time of filing of the bill, such an abandonment by the defendants, constituting the present membership of the society, of the principles and purposes upon which and for which the said society was founded, as to work a dissolution of the same. The complainants therefore contend that, such being

the case, the present property of said society reverts to the complainants and such others as were heirs at law and next of kin of those who contributed and gave to the said society its property.

To support the charge of the abandonment of purposes of the society, various specific allegations are made concerning the alleged immorality of John Duss and others of the defendants, of the intemperance alleged to prevail among them, and the alleged renunciation of the religious principles generally, upon which the society was founded.

In view of the findings of the master, hereinafter referred to, it is unnecessary to consider these allegations in detail.

After the cause was at issue, upon agreement and request of the parties, the Court below appointed W. W. Thompson, Esquire, as examiner and master, with authority to hear and take all the testimony, and find all the issues of fact and law, and to report the testimony and such findings to the Court. In pursuance of this appointment, a great amount of testimony was adduced by the parties and taken by the examiner, who returned the same to the Court below, together with a long and most elaborate report, embodying his findings, as master, of the facts and conclusions of law arising thereon.

To these findings of the master, exceptions were duly taken and filed, and argued before the Court below. That Court, after hearing the case upon pleadings and evidence, the master's report and the exceptions thereto, made a decree dismissing the complainant's bill. From this decree an appeal has been taken to this Court and numerous exceptions have been filed.

But it is only necessary to consider the underlying questions. These are succinctly and correctly stated by the master, in his report, as follows:

"1st. Have the plaintiffs or any of them, such proprietary right or interest in the property or assets of the Harmony Society as entitled them, upon the dissolution of the society, to any part of, or share in, such property or assets, or as entitled them to the account prayed for in the bill?

"2nd. Has the Harmony Society been dissolved by the common consent of the members or by an abandonment of the purposes for which it was formed?"

These obviously fundamental and determining questions have been most ably discussed by the master in the light of the testimony and documentary evidence, all of which, together with the master's report, are contained in the record before this Court.

The findings of fact by the master bearing on the first of these questions were as follows:

"First. That none of the plaintiffs were ever members of the society.

"Second. That all of those members of the society through whom Christian Schwartz claims as their heir, signed the agreements of 1836 and 1847, and continued members until their death.

"Third. That Antony Koterba claims as heir of his father, Joseph Koterba, and his half-brother Andreas Koterba, and that Joseph Koterba joined in the organization of the society, and also signed the agreement of 1827, and afterwards, in 1827, withdrew from the society, and that Andreas Koterba signed the agreements of 1827, 1836 and 1847, and died a member of the society.

"Fourth. That the grandparents of David Strohaker, viz., Christian Strohaker and wife, and Matthias Rief and wife, joined the society in 1805 and all remained members until their death—all dying between 1820 and 1825, except Mrs. Reif who died between 1830 and 1836. That his father, Christian Strohaker, signed the agreements of 1827, and withdrew from the society in 1827. That his aunt (Christiana) Catharine Strohaker, signed the agreements of 1827, 1836 and 1847, and continued a member of the society until her death.

"Fifth. That Lawrence Scheel and Jacob Scheel, ancestors of Allen and G. L. Scheel or Shale, joined the society in 1805; that Lawrence withdrew in 1824 or 1826; that Jacob Scheel signed the agreement of 1827, and died a member about 1837.

"Sixth. That none of the parties, through whom the plaintiffs claim, contributed any money to the society."

As a conclusion of law upon the facts thus found, the master reports: "The plaintiffs, therefore, under their agreements have no claims on the property of the society through any of their ancestors. Not through those who withdrew before the execution of the agreement of October 31st, 1836, because those who withdrew had had returned to them the value of any property they might have contributed, and had received compensation for their interest or part in the society or its property. Not through those who died in the society before 1836, because all their interest in the property had become vested in the society and did not descend to their heirs. And not through those who died in or withdrew from, the society after the agreement of 1836, because they had by that agreement expressly renounced for themselves and their heirs all right to claim anything on their withdrawal or death.

In all the cases cited above the principle of survivorship in the

remaining or surviving members was recognized as existing, and approved and enforced."

As a mixed finding of fact and law, the master, for reasons set out at great length in his report, answers the second question above stated, as follows: "That there has been no abandonment of the purposes for which the Harmony Society was founded, and that the said society has not been dissolved by reason of any such abandonment, and that the plaintiffs are not entitled to the relief prayed for in the bill."

The report ends with a recommendation by the master, that the bill of complainants be dismissed with costs.

Where the Court with the consent and by the agreement of parties, appoints a master, and confers upon him "authority to hear and take all testimony, and find all the issues of law and fact" as in this case, in so far as the report of the master, and the opinion of the Court find facts, such findings are considered as conclusive in this Court, unless plain error be unmistakably shown, from the great preponderance of evidence in the case.

Met. Bank vs. Rodgers, 53 Fed. Report 776.
Kimberly vs. Arms, 129 U. S. 525.
Dravo vs. Fahill, 132 U. S. 487.

The findings of facts made by the master were confirmed by the Court below. The learned Judge of that Court, in his opinion, states that he read all the testimony in the case, in order to come to an independent conclusion, and that the conclusion so arrived at agreed entirely with that reported by the master. Such finding by the master and the Court, unless found by this Court to be unmistakably and plainly erroneous, will be binding here, and will determine this case adversely to the complainants, and make unnecessary any examination of the questions of law that might have been involved upon different findings of fact.

A careful examination of the testimony and evidence contained in the record before us, not only fails to make manifest any such plain and unmistakable error in these findings, but convinces this Court that they were in all respects justified. The learned Judge of the Court below has so completely covered the questions of law and fact arising in this case and necessary to its determination, that we feel constrained to adopt as our own, his opinion, as we find the same in the record, part of which we here repeat as follows:

"The plaintiffs sue as heirs of certain persons who were formerly members of the Harmony Society and who continued to be members until their voluntary withdrawal or death. The bill is against all persons who composed the society at the time of the

commencement of the suit, namely, June 27th, 1894, and the membership then embracing sixteen persons."

The bill joins as co-defendants with the members of the Harmony Society, Henry Hice, John Reeves and the Union Company, a corporation, the bill charging that these three defendants and the defendant John S. Duss, a member of the society, and the Senior Trustee thereof,—were acting together in a conspiracy to wreck and dismember the society and appropriate to themselves the entire assets of the society. The bill further alleges that the purposes for which the society was founded and its established practices had been abandoned, and that by common consent the society had ceased to exist as an association and had been dissolved, and that "the assets of such dissolved association have reverted to the donors thereof, among whom were the ancestors and intestates of the plaintiffs." The bill prays for the appointment of a receiver, and for the division and distribution of the assets of the society amongst the persons legally entitled thereto, including the plaintiffs.

All the defendants have answered the bill. In their answers they all deny the above recited charges and allegations and all the averments in the bill upon which the plaintiffs supposed right t relief rests; and they also deny that the plaintiffs have any interest whatever in the property of the Harmony Society or any right to intermeddle with its affairs." * * * In conformity with the agreement of the parties and pursuant to the order appointing him, the master took a large amount of testimony and made findings which are embodied in a written report to the Court.

The master filed with his report the testimony and exceptions taken by the plaintiffs to his findings.

"The cause has been heard upon the pleadings and evidence, the master's report, and the exceptions thereto. The report of the master is altogether adverse to the plaintiffs. He finds that the charges of conspiracy and misconduct and the allegations of the abandonment of the purposes and established practices of the Harmony Society and of the dissolution of the society, contained in the bill, are not sustained by the evidence, and that they are not true. Upon every material question of fact, the findings of the master is distinctly in favor of the defendants, and he recommends the dismissal of the bill.

"The master's report covers the entire case and evinces the most careful consideration of every question here raised. Nevertheless the Court felt it to be its duty to make an independent investigation of the facts and merits of the case; and therefore we have attentively read and considered the whole of the evidence.

"Avoiding as needless, a particular discussion of the numerous exceptions to the master's report, we will briefly state our general views and conclusions."

The constitution of the Harmony Society is embodied and the general purposes of the association are set forth in a series of written agreements executed in the years 1805, 1821, 1827, 1836, 1847 and 1890. These agreements were signed at their respective dates by all the then members of the society. By the agreement of 1805, the doctrine of community of property became, and by subsequent agreements continues to be a fundamental principle of the society. Its acceptance is an essential condition of membership. By the constitution of the society, individual ownership of property is renounced in favor of the community or society. The members have all things in common, and each is entitled to receive from the society necessary maintenance, support and education, and in return, each is bound to render to the society labor and obedience. The agreement of 1827 contained a provision that if any member withdrew from the society there should be refunded to him the value, without interest, of all the property he had brought into the community. The agreement of 1836, however, rescinded that provision wholly and stipulated that if any individual shall withdraw from the society, or depart this life, neither he in the one case, nor his representatives in the other shall be entitled to demand an account of his contributions, whether in lands, goods, money or labor, or to claim anything from the society as a matter of right; but that it shall be left altogether to the discretion of the superintendent to decide whether any, and if any, what allowance shall be made to such member, or his representatives, as a donation."

"In view of the decision of the Supreme Court of Pennsylvania, in Schriber vs. Rapp, 5 Watts 351 and the decisions of the Supreme Court of the United States in Goesele et al. vs. Bimeler et al., 14 How. 589, and Baker et al. vs. Nachtrieb, 19 How. 126, it is clear that the above recited articles of agreement are valid contracts, and that thereunder, upon the death of a member of the society in fellowship, no claim enforceable against the society or its property passes to his heirs or personal representatives, and that since 1836 no member voluntarily withdrawing from the society could acquire any such claim.

"Now, not one of the plaintiffs was ever a member of the Harmony Society. Furthermore, it does not appear that any of the persons through whom the plaintiffs claim contributed any money or property to the society. The master has found that no such

contribution was ever made by any of those persons. The correctness of that finding has not been impeached. All the members through whom the plaintiffs claim who left the society, withdrew in or before the year 1827. Presumably they retired upon terms satisfactory to themselves. If, however, those persons so withdrawing had any legal demands against the society, those demands have been barred by lapse of time. Spiedel vs. Henrici, 120 U. S. 377. The other persons through whom the plaintiffs claim remained with the society and died in fellowship.

"They thus received and enjoyed all the benefits secured to them by the recited articles of agreement, and therefore, no rights enforceable against the society passed from them to their heirs or personal representatives.

"The soundness of the view that deceased ancestors and the collateral relatives of the plaintiffs could transmit to them no rights enforceable against the Harmony Society as a living organization, is impliedly conceded in the bill, for it alleges that the society has come to an end. The bill proceeds upon the theory that a dissolution of the society had been brought about. Upon this assumption, and under the allegation "that recently said Harmony Society has become dissolved as aforesaid;" the bill prays that the Court take charge of the assets of the society, and distribute the same amongst the parties legally and equitably entitled thereto.

"But the hypothesis of dissolution is not well founded. The proofs show that the society is in full life. There has been no dissolution of the society either by the common consent of the members or by their acts. The membership, indeed has become greatly reduced, but the rights of the society, as now constituted, are as sacred in the eye of the law as they were when the membership was twenty-fold greater. The society as an organization exists in law and in fact. Under the evidence the findings of the master, upon this branch of the case, undoubtedly are right. Hence the very foundation of the bill fails. The plaintiffs do not show that they are entitled to any equitable relief whatever.

"It is not necessary, nor would it be proper, for the Court to express any opinion as to what would be the legal status and the ultimate disposition of the property of the Harmony Society, were its existence terminated by the death of all its members or were a dissolution of the society otherwise effected. No such questions are before us. We are not dealing with the assets of a defunct or dissolved association." "In respect to the alleged conspiracy to wreck and dismember the society, we feel called upon

to say that we fully agree with the conclusion of the master. The acts here principally complained of, we think, designed, not to destroy the society, but to save it from the consequences of business mistakes made by none of the present members or officers of the society, and for which none of them were at all responsible. The measures resorted to in the emergency which was upon the society were successful in extricating it from great financial peril. Those measures were adopted and carried out under advice of eminent counsel, whose rectitude of purpose the Court cannot doubt."

"And, now, before closing, we deem it to be our duty to declare, that after the most careful scrutiny of the evidence, it is our judgment that the charges of immorality made against John S. Duss, the Senior Trustee, in the twenty-fourth paragraph of the bill, are not sustained by the evidence, but are disproved."

"The general rule in equity that the costs follow the decree, we think, should be applied, here, under the circumstances. Swetzel vs. Penn Bank, 147 Pa. 140, 154. The bill alleges conspiracy, fraud, immorality, and these grave charges have not been withdrawn. Having successfully vindicated themselves from these charges, the defendants are justly entitled to full costs."

The decree of the Court below, dismissing the bill is AFFIRMED.

EXHIBIT "A."

Translation from the German Article executed at Harmony, Butler County, February 15th, 1805.

Be it hereby known to all who need to know it, that the following agreement has this day been made and concluded between us, the subscribers of the one part, and George Rapp and his associates of the other part:

ARTICLE 1. We the subscribers, on our part and on the part of our heirs and descendants, deliver up, renounce and remit all our estate and property consisting of cash, land and chattels, or whatever it may be, to George Rapp and his associates, in Harmony, Butler County, Pennsylvania, as a free gift or donation, for the benefit and use of the community there, and bind ourselves on our part, as well as on the part of our heirs and descendants, to make free renunciation thereof, and to leave the same at the disposal of the superintendents of the community as if we never had nor possessed it.

ARTICLE 2. We do pledge ourselves jointly and severally to submit to the laws and regulations of the community, and to show due and ready obedience toward those who are appointed and chosen by the community as superintendents in such a manner that not only we ourselves endeavor, by the labor of our hands, to promote the good and interest of the community, but also to hold our children and families to do the same.

ARTICLE 3. If, contrary to our expectation, the case should happen, and we jointly or severally could not stand to it in the community, and we would within a few or more years break our promises and withdraw from the community, for whatever cause it may be, never to demand any reward, either for ourselves or children or those belonging to us, for any of our labors or services rendered, but whatever we jointly and severally shall or may do, we will have all done as a voluntary service for our brethren.

In consideration whereof George Rapp and his associates adopt the subscribers jointly and severally as members of the community, whereby each of them obtains the privilege to be present at each religious meeting; not only they themselves but also their children and families, shall and will receive the same necessary instructions in church and school which is needful and requisite for their temporal good and welfare as well as eternal felicity.

ARTICLE 4. George Rapp and his associates promise to supply the subscribers jointly and severally with all the necessaries of life, as lodging, meat, drink and clothing, etc., and not only during their healthful days, but also when one or more of them become sick or otherwise unfit for labor, they shall have and enjoy the same support and maintenance as before; and if, after a short or long period, the father or mother of a family should die, or be otherwise departed from the community and leave a family behind, they shall not be left widows or orphans, but partake of the same rights and maintenance as long as they live or remain in the community, as well in sick as healthful days, the same as before, or as circumstances or necessity may require.

ARTICLE 5. And if the case should happen as stated above, that one or more of the subscribers after a short or a long period, should break their promise and could or would not submit to the laws and regulations of the church or community, and for that or any other cause would leave Harmony, George Rapp and his associates promise to refund him or them, the value of his or their property brought in, without interest, in one, two or three annual installments, as the sum may be, large or small; and if one or more of them were poor and brought nothing in the community, they shall, provided they depart openly and orderly, receive a donation

in money, according to his or their conduct while a member or as he or their circumstances and necessities may require, which George Rapp and his associates shall determine at his or their departure.

In confirmation whereof both parties have signed their names.

Done in Harmony, February 15, 1805.

EXHIBIT "B."

Translation from the German Article executed at Harmony, Indiana.

Be it hereby known that to-day (20th January, 1821), in the year of our Lord one thousand eight hundred and twenty-one, the present agreement, treaty and alliance was made and concluded between us, the following persons, to-wit: N. N., etc., of the one part and George Rapp and his association of the other part.

After the aforesaid persons became sufficiently acquainted with the principles, rules and regulations of the community of George Rapp and his association, by virtue of their religious principles, they have after long and mature reflection, out of their own free will, determined to join the community of said George Rapp and his association in Harmony, Posey County, State of Indiana; to that purpose the aforesaid persons bind themselves and promise solemnly by these presents, to comply with the ordinances, rules and regulations of the community, and render due obedience to the superintendents ordained by the community, and to perform as much as possible all occupations and labors to which they are ordered, and help to promote the benefit, happiness and prosperity of the community. And if the case should happen that the aforesaid persons, jointly or singly after a short or long period of time, leave the community for any cause whatever, they hereby bind themselves jointly and each for himself separately never and in no case to bring any account, nor make any claim, either against the association or any individual member thereof, for their labor and services rendered; also, never to make any demand, ask or claim any other payment, under any name and description whatsoever, but will do and have done all things out of Christian love for the good and benefit of the community, or else take it as a gift if George Rapp and his association willingly give them something.

However, George Rapp and his association, in return adopt the aforesaid persons into their community, whereby they obtain prerogative to partake of all meetings for divine services, by which they receive in church and school the necessary instructions, requisite and needful for their temporal benefit, and happiness and eternal felicity. George Rapp and his association bind themselves further to supply the aforesaid persons with all the wants and necessaries of life, to wit: meat, drink and clothing, etc., and indeed not only during their healthful days, but also if all or any of them get sick or otherwise infirm and unable to work, they shall, as long as they remain members of the community, receive and enjoy the same support as before, during their better days, or as their circumstances may require.

In confirmation of the presents we, both parties, have hereunto set our hands and seals. Done in Harmony, the day and year above stated.

EXHIBIT "C."

Copy of the Articles of Association, Executed at Harmony, March 9th, 1827.

WHEREAS, By the favor of Divine Providence, an association or community, has been formed by George Rapp and many others, upon the basis of Christian Fellowship, the principles of which being faithfully derived from the sacred Scriptures, include the government of the patriarchial age, united to the community of property adopted in the days of the apostles, and wherein the single object sought is to approximate, so far as human imperfection may allow, to the fulfillment of the will of God, by the exercises of those affections, and the practice of those virtues which are essential to the happiness of man in time and throughout eternity;

AND WHEREAS, It is necessary to the good order and well-being of said association that the condition of membership should be clearly understood, and that the rights, and privileges, and duties of every individual therein should be so defined as to prevent mistake or disappointment on the one hand and contention or disagreement on the other.

Therefore, Be it known to all whom it may concern: That we, the undersigned, citizens of Beaver County, in the Commonwealth of Pennsylvania do severally and distinctly, each for himself, cove-

nant, grant and agree to and with the said George Rapp and his associates as follows, to-wit:

ARTICLE 1. We, the undersigned, for ourselves, our heirs, executors and administrators, do hereby give, grant and forever convey to the said George Rapp and his associates and their heirs and assigns, all our property, real, personal and mixed, whether it be lands and tenements, goods and chattels, money or debts due to us, jointly or severally, in possession, or in remainder, or in revision, or in expectancy, whatsoever or wheresoever, without evasion, or qualification, or reserve, as a free gift or donation, for the benefit and use of the said association or community; and we do hereby bind ourselves, our heirs, executors and administrators to all such other acts as may be necessary to vest a perfect title to the same in the said association, and to place the said property at the full disposal of the superintendents of the said community without delay.

ARTICLE 2. We do further covenant and agree to and with the said George Rapp and his associates that we will severally submit faithfully to the laws and regulations of the said community, and will at all times manifest a cheerful and ready obedience toward those who are or may be appointed as superintendents thereof, holding ourselves bound to promote the interests and welfare of the said community, not only by the labor of our own hands but also that of our children or families and others who now are or hereafter may be under our control.

ARTICLE 3. If, contrary to our expectations, it should so happen that we could not render the faithful obedience aforesaid, and should be induced, from that or any other cause to withdraw from the said association, then and in such case, we do expressly covenant and agree to and with the said George Rapp, and his associates that we will never claim or demand, either for ourselves, our children, or for any one belonging to us, directly or indirectly, any compensation, wages or reward whatever, for our or their labor or services rendered to the said community, or to any member thereof; but whatever we or our families jointly or severally shall or may do, all shall be held and considered as a voluntary service for our brethren.

ARTICLE 4. In consideration of the premises, the said George Rapp, and his associates, do by these presents adopt the undersigned, jointly and severally, as members of the said community, whereby each of them obtains the privilege of being present at every religious meeting, and of receiving, not only for themselves, but also for their children and families, all such instructions in

church and school as may be reasonably required, both for their temporal good and for their eternal felicity.

ARTICLE 5. The said George Rapp, and his associates, further agree to supply the undersigned severally with all the necessaries of life, as clothing, meat, drink, lodging, etc., for themselves and their families; and this provision is not only limited to their days of health and strength, but when any of them shall become sick, infirm, or otherwise unfit for labor, together with such medicine, care and attendance and consolation as their situation may reasonably demand. And if at any time after they have become members of the association, the father or mother of a family should die or be otherwise separated from the community, and shall leave their family behind, such family shall not be left orphans or destitute, but shall partake of the same rights or maintenance as before, so long as they remain in the association, as well in sickness as in health, and to such extent as their circumstances may require.

ARTICLE 6. And if it should happen as above mentioned that any of the undersigned should violate his or her agreement, and would or could not submit to the laws and regulations of the church or community, and for that or any other reason should withdraw from the association, then the said George Rapp, and his associates agree to refund to him or them the value of all such property, without interest, as he or they may have brought into the community in compliance with the first article of this agreement, and the said value to be refunded in one, two or three annual installments, as the said George Rapp and his associates shall determine. And if the person or persons so withdrawing themselves were poor, and brought nothing into the community, yet if they depart openly and regularly, they shall receive a donation in money, according to the length of their stay, and to their conduct, and to such an amount as their necessities may require, in the judgment of the superintendents of the association.

In witness whereof and in testimony that the undersigned have become members of the said community, upon the conditions aforesaid, they have hereunto severally and each for himself set their hands and seals on the 9th day of March, in the year 1827.

In the presence of JOHN HOPKINS
AND
CHARLES S. VOLTZ.

EXHIBIT "D."

Supplementary Article of 1836.

WHEREAS, The Harmony Society, consisting of George Rapp and many others, now established in the town of Economy, in Beaver County, Pennsylvania, did, on the 9th of March, 1827, enter into certain articles of association, of which the 6th in number, is as follows, viz.:

"And it would so happen as above mentioned, that any of the undersigned should violate his or their agreement, and would or could not submit to the laws and regulations of the church or community, and for that or any other cause should withdraw from the association, then the said George Rapp and his associates agree to refund to him or them the value of all such property as he or they may have brought into the community, in compliance with the first article of this agreement, the said value to be refunded without interest in one, two or three annual installments, as the said George Rapp and his associates shall determine.

"And if any person or persons so withdrawing themselves were poor, and brought nothing into the community, yet if they depart openly and regularly, they shall receive a donation in money, according to the length of their stay and to their conduct, and to such amount as their necessities may require in the judgment of the superintendents of the association."

AND WHEREAS, The provisions of the said 6th article though assented to at the time, manifestly depart from the great principle of a community of goods and tend to foster and perpetuate a feeling of inequality at variance with the true spirit and objects of the association;

AND WHEREAS, The principle of restoration of property, besides its pernicious tendency, is one which cannot now be enforced with uniformity and fairness, inasmuch as the members of the association in the year 1818, under a solemn conviction of the truth of what is above recited, did destroy all record and memorial of the respective contributions up to that time;

AND WHEREAS, Continued happiness and prosperity of the association, a more intimate knowledge of each other have removed from the minds of all members the least apprehension of injustice and bad faith;

Now, Therefore, Be it known by these presents, that the undersigned, with a view to carry out fully the great principles of our union, and in consideration of the benefits to be derived therefrom,

do hereby solemnly enter into covenants, and agree with each other as follows:

1st. The said 6th article is entirely annulled and made void, as if it had never existed; all others remain in full force as heretofore.

2nd. All the property of the society, real, personal and mixed, in law or equity, and howsoever contributed or acquired shall be deemed now and forever joint and indivisible stock. Each individual is to be considered to have finally and irrevocably parted with all his former contributions, whether in land, goods, money or labor; and the same rule shall apply to all future contributions whatever they may be.

3rd. Should any individual withdraw from the society, or depart this life, neither he, in the one case nor his representatives in the other, shall be entitled to demand an account of said contributions, whether in land, goods, money or labor, or to claim anything from the society as matter of right. But it shall be left altogether to the discretion of the superintendent to decide whether any, and if any, what allowance shall be made to such member or his representatives as a donation.

Invoking the blessing of God on this sacrifice of all narrow and selfish feelings to the true purposes of the association and to the advancement of our own permanent prosperity and happiness, we have signed the foregoing instrument, and affixed thereunto our respective seals, at Economy, this 21st day of October, 1836.

Signed and sealed in the presence of

(Signed by 391 members.)
(Signed by Plaintiff and others.)

CHARLES D. VOLTZ,
WILLIAM P. BAUM.

EXHIBIT "E".

Articles of Association of the Harmony Society, entered 14th of August, 1847.

WHEREAS, By the decree of God, the venerable Patriarch and much-beloved founder and leader of the Harmony Society, George Rapp, has departed this life, whereby its members are deprived of his Christian fellowship and religious ministry, and of his superintendence in their temporal affairs, and whereas, in consequence of this deeply afflicting dispensation it has become neces-

sary to the good order and well-being of the association that some plan should be agreed upon to regulate its future affairs, promote its general welfare and preserve and maintain it upon its original basis;

Therefore, Be it known to all whom it may concern, that we the unndersigned, surviving and remaining memebers of the Harmoy Society, and constituting the same, do severally and distinctly, each for himself, covenant, grant and agree to and with all the others thereof, and with those who shall hereafter become members as follows: That is to say,

ARTICLE 1st. We do hereby solemnly recognize, re-establish and continue the articles of our association (the sixth section excepted) entered into at Economy on the 9th day of March, A. D. 1827, in the presence of John H. Hopkins and Charles L. Voltz and the supplement thereto, adopted at the same place on the 31st day of October, A. D. 1836, in the presence of Charles L. Voltz and William P. Baum, except so far as the same are affected by the death of the said George Rapp, or hereinafter altered or modified, and to this extent we declare the said articles to remain in full force.

ARTICLE 2ND. We hereby ordain and establish a Board of Elders, which shall consist of nine members of the Harmony Society and their successors, to be chosen as hereinafter provided: John Stahl, John Schnabel, Adam Nachtrieb, Matthew Scholle, Joseph Hoerle, John Eberle, Romulus L. Baker, Jacob Henrici, Jonathan Lenz shall be the first board.

ARTICLE 3RD. The Board of Elders shall have and exercise the following powers, to wit: 1st. To regulate and manage exclusively the internal temporal concerns of the Harmony Society; to appoint and remove superintendents in the several departments of industry; to make regulations and give orders in relation to their business operations, and generally to take care that the members perform the duties assigned to them. 2nd. To determine all disputes and misunderstandings amongst the members of the society; to advise if necessary, reprove any member who may be in fault or found delinquent in his duty. 3rd. To admit new members into the society and to expel them therefrom. New members when admitted shall subscribe this agreement as the evidence of their membership, and of the rights acquired by, and the duties imposed upon them. 4th. To establish regulations for the maintenance and improvement of the morals of the society and for the instruction of its members. 5th. To appoint one or more of its members spiritual leaders and instructors with such authority in relation to church discipline as shall be conferred by the board. 6th. To remove from the Board of Elders and to declare his seat vacated, also to remove

from office either or both of the trustees hereinafter appointed for the management of the external affairs and their successors in office. 7th. To fill all vacancies in the Board of Elders occasioned by the death, resignation or removal from office of any of its members and their successors, and so as often as a vacancy shall occur, to fill all vacancies in the office of trustee, when either or both of the trustees or their successors shall die, resign his office or be removed from the same, and so often as a vacancy shall occur. 8th. The concurrence of six members of the Board of Elders shall be deemed the act of the board and a legal exercise of any of the powers hereinbefore conferred on the said board. 9th. A record book shall be kept in which the Board of Elders shall enter all proceedings that they shall consider of sufficient importance to be preserved. In all controversies, judicial or otherwise, in which the society or any of its members may be a party, such record shall be full and absolute evidence of the facts and proceedings therein contained, and the affirmation of any elder shall be competent evidence of the identity of the said record.

ARTICLE 4TH. We do further ordain and establish a Board of Trustees for the exclusive management of the external business and affairs of the society, which board shall consist of two persons, who shall be members of the Board of Elders, and their successors who shall be appointed as hereinbefore provided. Romulus L. Baker and Jacob Henrici shall be the first Board of Trustees.

ARTICLE 5TH. The said trustees shall jointly and severally have and exercise the powers following, to wit: 1st. In their own names or that of either of them, or otherwise, to purchase and sell, deal, barter, exchange and traffic, make all contracts and bargains in the prosecution of the business, to invest the funds in stocks and other securities, and make transfers and assignments, to collect debts, receive and pay out moneys, settle claims, compromise disputes, institute legal proceedings, appoint and dismiss agents, clerks and attorneys in fact, and at law, and generally to transact all the external business affairs of the society. 2nd. To make donations to seceding and excluded members and to the representatives of those who are deceased, and for such benevolent and charitable purposes as they may deem prudent and fit. 3rd. The said trustees shall have power jointly to purchase real estate in their own names and also in their joint names, to grant, bargain, sell and convey all or any of the lands and tenements now or hereafter owned by or belonging to the said society, and for this purpose to execute deeds of conveyance in fee simple or otherwise in their joint names, but the proceeds of all such sales shall be held in trust for the society. 4th. For the purpose of providing effectual and convenient remedy

in law for all injuries to the property of the said society, real and personal, by trespass, ouster, detention, conversion or otherwise. The said trustees are hereby invested with the rights of possession, entry and action in their own names as fully and to all intents and purposes as do and may exist in the said society, and to effectuate this object more completely and in consideration thereof, we grant and transfer to the said trustees all such title and interest in the said property as shall be necessary therefor. The proceeds of all suits to be brought shall be in trust for the society. 5th. The powers hereby vested in the said trustees shall extend to and embrace all the property of said society, real, personal or mixed, whether standing or held in the name of the late Frederick Rapp, the said George Rapp, or in any other name or form whatsoever.

ARTICLE 6TH. It is hereby distinctly and absolutely declared and provided that all the property, real, personal and mixed, which now or hereafter shall be held or acquired by any trustee or trustees or persons under them, is and shall be deemed the common property of said society, and each trustee now or hereafter appointed, hereby disclaims all personal interest in the present resources and future earnings of the society, other than that of a member thereof, according to the articles of association hereby re-established and continued, and according to the present agreement.

IN WITNESS WHEREOF, We, the undersigned members of the Harmony Society, who constitute the said association, have, to these articles executed in English and in German, hereunto set our hands and seals at Economy, in Beaver County, this 12th day of August, A. D. 1847.

Read over to and signed and sealed by the several persons whose names are subscribed in the presence of us.

Signed by W. P. BAUM and others.

(Duly Acknowledged.)

Recorded in Beaver County, Pa., Deed Book 25, page 121, etc.

EXHIBIT "F."

Agreement, Ratification and Confirmation of and by the Members of the Harmony Society, at Economy, Beaver County, Pa. Recorded July 31st, 1890, Deed Book 125, Page 415, Beaver County.

WHEREAS, After the death of George Rapp, the founder and

leader of the Harmony Society, to wit: On the 12th day of August, A. D. 1847. All he then members of the said society, by articles and a compact in writing of that date, duly executed at Economy, in the County of Beaver, State of Pennsylvania, in the presence of William P. Baum, Francis LeGoulan, and Andrew Bimber, and subsequently recorded in the office for recording deeds, in and for the County of Beaver, in Deed Book, vol. 25, page 121, etc., adopted and established a system and plan for the regulation and government of the society, the management of their internal temporal affairs, as also for the management and transaction of their external affairs, and business in and by which articles John Schnabel, Adam Nachtrieb, John Eberly, Matthew Schottle, Joseph Hoerhla, John Eberly, Romulus L. Baker, Jacob Henrici and Jonathan Lenz were appointed and constituted the first Board of Elders therein established; and Romulus L. Baker and Jacob Henrici, two members of the society and of the Board of Elders, aforesaid, were therein appointed and constituted the members of the Board of Trustees of said society, provided for and established, which Board of Elders as thus constituted, and their successors, duly appointed, under the authority and in the manner therein granted and provided, have managed the internal temporal affairs of the society as therein directed until the present time, the present Board of Elders being constituted and consisting of Jacob Henrici, Ernest Woelfel, Michael Stiab, Johannes Schied, Moritz J. Fredericks, Gottlieb Lauppe, J. Jacob Nicklaus, Herman Fischern and John S. Duss; and Romulus L. Baker and Jacob Henrici, the trustees aforesaid, and their successors, were and by said articles authorized and empowered, jointly and severally in their own names, or that of either of them, to make all contracts, purchase and sell, invest the funds of the society, collect debts, receive and pay moneys, compromise and settle claims and disputes, appoint and discharge attorneys in fact and at law, institute and conduct legal proceedings and generally to manage and transact all the external business and affairs of the society, to make donations to withdrawing members and for charitable purposes, etc. Also jointly in their own names, to grant, bargain, sell and convey all or any of the lands, tenements and real estate then or thereafter owned or belonging to the society, and for this purpose to excute deeds of conveyance in fee simple or otherwise, in their joint names, etc., as by reference to said articles recorded as aforesaid will more fully appear:

And Whereas, Romulus L. Baker and Jacob Henrici accepted said trust, acted as trustees of said Harmony Society, managing and transacting their business and affairs under the authority aforesaid, until the death of the said Romulus L. Baker, on the 11th day

of January, 1868, whereupon in pursuance of the authority conferred by and according to the terms and provisions of said articles recorded as aforesaid, Jonathan Lenz, a member of said society, and of the Board of Elders, aforesaid, was duly appointed and constituted a member of the Board of Trustees, to fill the vacancy occasioned by the death of said Romulus L. Baker, and thereafter the external business and affairs thereof were managed and conducted and transacted by the said Jacob Henrici and Jonathan Lenz as trustees, the same being managed, conducted and transacted under and in accordance with the authority given and conferred by the articles aforesaid until the death of said Jonathan Lenz, on the 21st day of January, 1890, whereupon the Board of Elders, consisting of the members last hereinbefore named and mentioned as constituting said board, in pursuance of the authority and direction of the articles aforesaid, appointed and constituted Ernest Woelfel (also a member of said society and of said Board of Elders) a trustee, to fill the vacancy thus occasioned in the said Board of Trustees, and the said Jacob Henrici and Ernest Woelfel have since that time conducted and transacted the business affairs of the society according to the terms and provisions of the articles aforesaid;

And Whereas, More than forty years have elapsed since the execution of the articles and compact aforesaid, adopting and establishing the system and plan for the regulation of the government of the internal affairs of the society, and the management, control and transaction of the external business and affairs thereof, and many changes have taken place in the membership of the society, most of the then members having since died, and others embracing part of the undersigned, having been admitted and become members thereof in accordance with the terms and provisions of said articles, all of the members of the Board of Elders, except said Jacob Henrici, designated and appointed in the said articles, having died, as also their successors in said board, and all of whom, as members of said board, managed the internal affairs of the society as above recited, and two of those who have been members of the Board of Trustees, and actively engaged in the management and transaction of the external business of the society, under the authority of the articles aforesaid, either severally and in their own names as trustees, or jointly with their co-trustee, Jacob Henrici, still surviving and in their joint names as such trustees, making contracts, purchasing and selling personal property, investing, collecting, receiving and paying moneys of the society, selling claims, purchasing real estate, selling real estate of the society, executing

and delivering deeds, assignments and transacting all the external business and affairs of the society have also died;

And Whereas, Said society, and the undersigned, the present members thereof, have received and enjoyed, and do now enjoy the benefits and advantages resulting from the management and regulation of the internal affairs thereof by the Board of Elders as aforesaid, as also the benefits and profit of the external business and affairs thereof, managed and transacted by those who constituted the Board of Trustees as aforesaid, and it is deemed right and proper that we, the undersigned surviving members of the society, who entered into the articles and compact aforesaid, and the others who have since become members as aforesaid, should recognize, approve and reaffirm said articles, and approve and confirm what has been done for and on behalf of the society, under and in pursuance thereof:

Now, Therefore, Be it known to whom it may concern, that we the undersigned, the surviving and present members of the Harmony Society, at Economy, aforesaid, and all the present members of said society, do severally, and each for himself, covenant, grant and agree to and with the others, and each and all the other members aforesaid, and signers hereof and with those who shall hereafter become members as follows, that is to say:

1st. We do hereby solemnly recognize, approve, reaffirm and continue the articles of agreement and compact of our association entered into at Economy, on the 12th day of August, 1847, and recorded in the recorder's office of Beaver County, as set forth in the preamble hereto and declare the same to be in full force, as a whole and all parts thereof, including the agreements and compacts mentioned and designated in the first article thereof, as fully and to the same extent as said mentioned agreements were recognized and established by said first article.

2nd. We do hereby approve and confirm any and all acts, matters and things done and transacted by the Board of Elders of the Harmony Society, as the same was from time to time constituted, since the date of the articles aforesaid, establishing said board, and we hereby ratify and confirm the appointment of the present Board of Elders, to wit: Jacob Henrici, Ernest Woelfel, Michael Staib, Johannes Schied, Moritz Fredericks, Gottfried Lauppe, J. Jacob Nicklaus, Herman Fischern and John S. Duss.

3rd. We do also hereby approve, ratify and confirm all acts, matters and things done, transacted and performed by the Board of Trustees of the Harmony Society, constituted first, of Romulus L. Baker and Jacob Henrici, until January 11th, 1868; afterwards, and from that date until January 21st, 1890, of Jacob Henrici and

Jonathan Lenz, and since the last mentioned date, of Jacob Henrici, Ernest Woelfel, hereby ratifying, confirming, holding, declaring as good and effectual in law and in equity, all acts, matters and things done, transacted and performed by each and all of said trustees in the purchase and sale of personal property, and in the making of contracts, investment of funds, purchase, sale and transfer of stocks, bonds and other securities, loaning or borrowing money, collection and payment of moneys, settlement or compromise of claims or disputes, in the institution and prosecution of legal proceedings, in the employment and discharge of attorneys in fact and at law, in the making of donations, in the purchase of real estate, and in the sale thereof, in the execution and delivery of deeds, conveyances, transfers and assignments, whether of and pertaining to real or personal estate, in the execution or delivery of notes or obligations of any kind, and generally all acts heretofore done by said trustees, in the conducting, managing and transacting of the business of the society, and whether done by said trustee or either of them, severally and in his own name as trustee, or jointly in the joint names of himself and his co-trustee.

4th. We do also hereby approve and confirm the acts of the Board of Elders in the appointment of Ernest Woelfel, as co-trustee with Jacob Henrici, and declare said Jacob Henrici and Ernest Woelfel, the present Board of Trustees, authorized and empowered to do, perform and transact any and all business of the society, and to the full extent of the powers and authorities mentioned and designated in and conferred on the Board of Trustees, in and by the articles hereinbefore mentioned, made and entered into August 12th, 1847, and recorded as aforesaid.

In witness whereof we have hereunto set our hands and seals this 30th day of April, A. D. 1890.

JACOB HENRICI,
ERNEST WOELFEL,
JOHN S. DUSS,
AND OTHERS.

(Duly Acknowledged.)

EXHIBIT "G."

WHEREAS, The undersigned, being all the members of the Harmony Society, at Economy, Beaver County, State of Pennsylvania, deem it proper and desirable that there should be some suitable,

proper and certain evidence of membership in said society, and that the rights and powers of the trustees of said society should be more clearly defined and understood:

Now, THEREFORE, While we do hereby ratify and confirm the Articles of Agreement and compacts of our association entered into at Economy on the 12th day of August, 1847, and those of April 30th, 1890, confirmatory of the former and ratifying the acts of the Board of Elders and Board of Trustees, both of which Articles of Agreement are recorded in the recorder's office of Beaver County, and are hereby reaffirmed, we and each of us, present members of the said Harmony Society, do hereby state and declare that this declaration, agreement and grant of power is, and is to be taken and considered as supplementary to the agreements, compacts and articles above mentioned, to wit:

1st. The present members of this society and association are Jacob Henrici, John S. Duss, J. Jacob Nicklaus, Moritz J. Fredericks, Gottfried Lauppe, Johannes Schied, Franz Gillman, Hugo Miller, Conrad Hermansdoerfer, Julius Stickel, Edward Kellerman, Henry Feucht, B. Feucht, Blazsius Platz, Sigmund Stiefvater, Regina Lautenschlager, Christina Rall, Karoline Molt, Katrina Nagel, Elizabeth Beck, Lena Rall, Thirza Feucht, Rebecca Feucht, Margaret Feucht, Christine Hoerer, Susie C. Duss, Bertha Geratch, Pauline Stickel, Johanna Hermansdoerfer, Maria Diem, Dorotha Hoehr, Philipina L. Wolfangel, Gottlieb Riethmueller, Samuel Sieber and Elizabeth Sieber, and no other person or persons than those above named is a member thereof, and that for the future it is agreed that before any person can become a member of the Harmony Society, he or she shall sign or make his or her mark to his or her name on the roll of membership, which shall always be kept in the record book of the society, which book was established by the aforesaid agreement of 1847, and is the same in which are entered copies of said articles above mentioned; and shall also sign a written agreement in said book binding himself or herself to the observance and performance of all and singular the declarations, stipulations, and agreements of the members of the society as contained in the several written articles above mentioned and in these articles, and the book aforesaid containing said roll of membership shall be the sole and exclusive proof of membership in the society.

2nd. It is hereby declared and agreed that the present Board of Elders of said society are Jacob Henrici, John S. Duss, Johannes Schied, Gottfried Lauppe, Moritz J. Fredericks, J. Jacob Nicklaus, Conrad Hermansdoerfer, Hugo Miller and Gottlieb Riethmueller; and the present Board of Trustees of said society are

Jacob Henrici and John S. Duss. And we do hereby grant and assign to said trustee and their successors, and do hereby agree and declare that the legal title to any and all the property, real and personal, owned or possessed by said society, wherever the same is situated or found, is, and is to be taken and considered as fully vested in the said trustees, Jacob Henrici and John S. Duss, above named, and held by them in trust for the society, but with full and complete power and authority in said trustees, their survivors and successors, at such time or times as they may deem advisable, and for the best interests of the society to sell and dispose of the same, or any part or parcel of the same, and for this purpose to make and deliver deeds in fee simple, or for any less estate, for any or all assignments or bills of sale of said personal estate, and to execute said real estate thus sold. This declaration and power to apply to and embrace any and all lands wherever situated now or hereafter belonging to said Harmony Society, or held in trust for said society, the title to which may be, or stand, in the name of Frederick Rapp, or George Rapp, or of R. L. Baker and Jacob Henrici, trustees; Jacob Henrici and Jonathan Lenz, trustees; Jacob Henrici and Ernest Woelfel, trustees; Jacob Henrici and John S. Duss, trustees, or any or either of them and their successors, and any Board of Trustees hereafter appointed.

3rd. To remove any possible doubt or misunderstanding as to their right and power in reference thereto, we hereby give and grant to said trustees above named, Jacob Henrici and John S. Duss, and to either of them and their survivors and successors, full power from time to time, and at such times as they or either of them may deem for the true interest of the society to borrow such sum or sums of money for such length of time, at such rates of interest and upon such other terms as the said trustees, or either of them or their survivors or successors may deem advisable; and jointly or severally to give notes, bills of exchange, bonds, due bills or other evidence of debt therefor, and to secure such loan or loans of money, bonds, notes, due bills or other evidences of debt by pledge or assignment of any stocks, bonds or other personal property of any kind now belonging, or that may hereafter belong to said society, and by mortgage or mortgages upon, or deeds of trust of, all or any part of the real estate and leaseholds of real property, which said society now own or possess, or hereafter may own or possess, and for this purpose the said trustees above named, or either of them, their survivors or successors, shall have full power and authority to make, execute and deliver any and all such instruments and conveyances as may in their judgment be reason-

ably necessary to enable them, or either of them, to carry the foregoing powers into full effect.

And in the execution of any instruments or conveyances in writing or otherwise that may be or so become reasonably necessary in the exercise or execution of any of the powers hereinbefore granted, either of said trustees, their survivors or successors may execute the same, and for that purpose may sign the joint names of said trustees, as in the following form: "Jacob Henrici and John S. Duss, trustees," or "Henrici and Duss, trustees," by (name of trustee executing) "Trustee."

In Witness Whereof, we have hereunto set our hands and seals this day of December, A. D. 1892.

EXHIBIT NO. 1.

Release or Quit Claim of Hugo Miller.

Economy, Beaver County, Pa.

I, Hugo Miller, being one of the members of the Harmony Society, at Economy, Beaver County, Pa., also one of the Board of Elders of said society, and being desirous of terminating said membership and withdrawing from said society, declare that I do hereby surrender and renounce forever all my rights, interests and privileges as a member of said society; and further, in consideration of the sum of five thousand ($5,000) dollars paid to me out of the funds of said society by Duss & Sieber, trustees thereof, I hereby cancel, release and discharge any and all claims whatsoever which I, my heirs or lawful representatives may or could ever have against said society or its property or any part thereof, I hereby declaring all such claims to be fully compromised, settled and discharged.

Witness my hand and seal this eighth day of March, 1893.

Hugo Miller.

In presence of

K. Rudolf Wagner.

EXHIBIT NO. 2.

Release or Quit Claim of Blazsius Platz.

I, Blazsius Platz, a member of the Harmony Society at Economy, Beaver County, Pa., being desirous of terminating said membership and withdrawing from said society, do declare that I hereby

of my own wish and purpose surrender and renounce my membership in and connection with said society, likewise all my rights, interests and privileges as a member thereof. And further, in consideration of the sum of five thousand ($5,000) dollars in cash paid to me out of the funds of said society, by John S. Duss and Samuel Sieber, trustees, receipt whereof is hereby acknowledged, I do hereby release, cancel and discharge any and all claims whatsoever which I, my heirs, assigns or lawful representatives may or could ever have against said society or its trustees, its property or assets, or any part thereof, I hereby declaring all such claims to be fully compensated, settled, released and discharged. And I do further declare that I have received the said sum of five thousand ($5,000) dollars, and have surrendered, compromised, settled, released and discharged all claims I or my heirs, assigns or lawful representatives have or could have against said society, its trustees, its property or assets, or any part thereof, entirely at my own solicitation and without any invitation, request or solicitation so to do, by said trustees or either of them, and in full knowledge of the fact that said society owns, in addition to its property at Economy and Leetsdale, several thousand acres of land in Michigan and in Warren County, Pa.; also certain tracts of land in Allegheny County, Pa.; also stocks and bonds in various railroad, mining, manufacturing and bridge companies, to the nominal amount of several hundred thousand dollars; also various judgments, mortgages and unsold lots in Beaver Falls and New Brighton of the nominal value of several hundred thousand dollars; also that while it may be possible that the said society may have a large amount of property after the payment of its debts, I am entirely satisfied to accept as my full share and interest therein said five thousand (5,000) dollars, and I will never hereafter make any claim for other or further payment of any sum whatever, nor for the delivery of any other property of said society to me, no matter what may be the value of the property and assets of said society, after payment of its debts, and all such claims thereto being by me hereby expressly barred and discharged.

Witness my hand and seal this ninth day of June, 1893.

In presence of: BLAZSIUS PLATZ.

K. RUDOLPH WAGNER.

EXHIBIT NO. 3.

RELEASE OR QUIT CLAIM OF MORITZ J. FREDERICKS.

I, Moritz J. Fredericks, a member of the Harmony Society at

Economy, Beaver County, Pa., being desirous of terminating said membership and withdrawing from said society, do declare that I do hereby, of my own wish and purpose, surrender and renounce forever my membership in and connection with said society, likewise all my rights, interests and privileges as a member thereof. And further, inconsideration of the sum of five thousand ($5,000) dollars in cash paid to me out of the funds of said society by John S. Duss and Samuel Sieber, trustees, receipt whereof is hereby acknowledged, I do hereby release, cancel and discharge any and all claims whatsoever which I, my heirs, assigns or lawful representatives may or could ever have against said society or its trustees, its property or assets or any part thereof, I hereby declaring all such claims to be fully compensated, settled, released and discharged. And I do further declare that I have received said sum of five thousand ($5,000) dollars, and have surrendered, compromised, settled, released and discharged all claims that I or my heirs, assigns or lawful representatives have or could have against said society, its trustees, its property or assets or any part thereof, entirely at my own solicitation and without any invitation, request or solicitation so to do by said trustees or either of them in the full knowledge of the fact that said society owns, in addition to its property at Economy and Leetsdale, several thousand acres of land in Michigan and in Warren County, Pa.; also certain tracts of land in Allegheny County, Pa.; also stocks and bonds in various railroad, mining, manufacturing and bridge companies to the nominal amount of several hundred thousand dollars; also various judgments, mortgages and unsold lots in Beaver Falls and New Brighton, of the nominal value of several hundred thousand dollars; also, while it may be possible that said society may have a large amount of property after the payment of its debts, I am entirely satisfied to accept as my full share and interest therein said five thousand ($5,000) dollars, and I will never hereafter make any claim for further or other payment of any sum whatever, nor for the delivery of any other property of said society to me, no matter what may be the value of the property and assets of said society after payment of its debts; all such claims thereto being by me hereby expressly barred and discharged.

Witness my hand and seal this fifth day of June, 1893.

Witness: MORITZ J. FREDERICKS.

W. H. BREITENSTEIN.

EXHIBIT NO. 4.

RELEASE OR QUIT CLAIM OF J. JACOB NICKLAUS.

I, J. Jacob Nicklaus, a member of the Harmony Society at Econ-

omy, Beaver County, Pa., being desirous of terminating said membership and withdrawing from said society, do declare that I do hereby, of my own wish and purpose, surrender and renounce forever my membership in and connection with said society, likewise all of my rights, interests and privileges as a member thereof. And further, in consideration of the sum of five thousand ($5,000) dollars in cash paid to me out of the funds of said society by John S. Duss and Samuel Sieber, trustees, receipt whereof is hereby acknowledged, I do hereby release, cancel and discharge any and all claims whatsoever which I, my heirs, assigns or lawful representatives may or could ever have against said society by its trustees, its property or assets, or any part thereof, I hereby declaring all such claims to be fully compensated, settled, released and discharged. And I do further declare that I have accepted said sum of five thousand ($5,000) dollars, and have surrendered, compromised, settled, released and discharged all claims that I or my heirs, assigns or lawful representatives have or could have against said society, its trustees, its property or assets, or any part thereof (entirely at my own solicitation and without any invitation, request or solicitation so to do by said trustees or either of them), in the full knowledge of the fact that said society owns, in addition to its property at Economy and Leetsdale, several thousand acres of land in Michigan and in Warren County, Pa.; also certain tracts of land in Allegheny County, Pa.; also stocks and bonds in various railroad, mining, manufacturing and bridge companies, to the nominal amount of several hundred thousand dollars; also various judgments, mortgages and unsold lots in Beaver Falls and New Brighton of the estimated value of several hundred thousand dollars; also, while it may be possible that said society may have a large amount of property after the payment of its debts, I am entirely satisfied to accept as my full share and interests therein said five thousand ($5,000) dollars, and I will never hereafter make any claim for further or other payment of any sum whatever, nor for the delivery of any other property of said society to me, no matter what may be the value of the property and assets of said society after payment of its debts (all such claims thereto being by me hereby expressly barred and discharged).

Witness my hand and seal this fifth day of May, 1893.

In the presence of: J. JACOB NICKLAUS.

FREDERICK VIERECK.

EXHIBIT NO. 5.

RELEASE OR QUIT CLAIM OF SIGMUND STIEFVATER.

I, Sigmund Stiefvater, a member of the Harmony Society at Economy, Beaver County, Pa., being desirous of terminating said membership and withdrawing from said society, do declare that I do hereby, of my own wish and purpose, surrender and renounce forever my membership in and connection with said society, likewise all my rights, interests and privileges as a member thereof; and further, in consideration of the sum of five thousand ($5,000) dollars in cash paid to me out of the funds of said society by John S. Duss and Samuel Sieber, trustees, receipt whereof is hereby acknowledged, I do hereby release, cancel and discharge any and all claims whatsoever which I, my heirs, assigns or lawful representatives may or could ever have against said society or its trustees, its property or assets or any part thereof, I hereby declaring all such claims to be fully compensated, settled, released and discharged. And I do further declare that I have accepted said sum of five thousand ($5,000) dollars, and have surrendered, compromised, settled, released and discharged all claims that I or my heirs, assigns or lawful representatives have or could have against said society, its trustees, its property or assets or any part thereof (entirely at my own solicitation and without any invitation, request or solicitation so to do, by said trustees or either of them), in the full knowledge of the fact that said society owns, in addition to its property at Economy and Leetsdale, several thousand acres of land in Michigan and in Warren County, Pa.; also certain tracts of land in Allegheny County, Pa.; also stocks and bonds in various railroad, mining, manufacturing and bridge companies to the nominal amount of several hundred thousand dollars; also various judgments, mortgages and unsold lots in Beaver Falls and New Brighton of the estimated value of several hundred thousand dollars; also, while it may be possible that said society may have a large amount of property after the payment of its debts, I am entirely satisfied to accept as my full share and interest therein said five thousand ($5,000) dollars, and I will never hereafter make any claim for further or other payment of any sum whatever, nor for the delivery of any other property of said society to me, no matter what may be the value of the property and assets of said society after payment of its debts (all such claims thereto being by me hereby expressly barred and discharged).

Witness my hand and seal this seventeenth day of May, 1893.

In presence of: SIGMUND STIEFVATER.

W. H. BREITENSTEIN.

This release was translated into German by the trustees, John S. Duss and Samuel Sieber, and he said that he understood the same before signing it.

W. H. BREITENSTEIN.

EXHIBIT NO. 6.

RELEASE OR QUIT CLAIM OF ELIZABETH F. SIEBER.

I, Elizabeth F. Sieber, a member of the Harmony Society at Economy, Beaver County, Pa., being desirous of terminating said membership and withdrawing from said society, do declare that I do hereby, of my own wish and purpose, surrender and renounce forever my membership in and connection with said society, likewise all my rights, interests and privileges as a member thereof; and further, in consideration of the sum of four thousand ($4,000) dollars in cash paid to me out of the funds of said society by John S. Duss and Samuel Sieber, trustees, receipt whereof is hereby acknowledged, I do hereby release, cancel and discharge any and all claims whatsoever which I, my heirs, assigns or lawful representatives may or could ever have against said society or its trustees, its property or assets or any part thereof, I hereby declaring all such claims to be fully compensated, settled, released and discharged. And I do further declare that I have received said sum of four thousand ($4,000) dollars, and have surrendered, compromised, settled, released and discharged all claims that I or my heirs, assigns or lawful representatives have or could have against said society, its trustees, its property or assets, or any part thereof, entirely at my own solicitation and without any invitation, request or solicitation so to do, by said trustees or either of them, in the full knowledge of the fact that said society owns, in addition to its property at Economy and Leetsdale, several thousand acres of land in Michigan and Warren County, Pa.; also certain tracts of land in Allegheny County, Pa.; also stocks and bonds in various railroad, mining and manufacturing and bridge companies to the nominal amount of several hundred thousand dollars; also various judgments, mortgages and unsold lots in Beaver Falls and New Brighton, of the nominal value of several hundred thousand dollars; also, while it may be possible that said society may have a large amount of property after the payment of its debts, I am entirely satisfied to accept as my full share and interest therein said four thousand ($4,000) dollars, and I will never hereafter make any claim for further or other payment of any sum whatever, nor for the delivery of any other property of said society to me, no matter

what may be the value of the property and assets of said society after payment of its debts (all such claims thereto being by me hereby expressly barred and discharged).

Witness my hand and seal this twenty-ninth day of June, 1893.

ELIZABETH F. SIEBER.

In presence of:

W. H. BREITENSTEIN.

EXHIBIT NO. 7.

RELEASE OR QUIT CLAIM OF CHRISTINE AND LEONHARD HOERER.

We, Christine Hoerer and Leonhard Hoerer, members of the Harmony Society at Economy, Beaver County, Pa., being desirous of terminating said membership and withdrawing from said society, do declare that we do each hereby of our own wish and purpose surrender and renounce forever our membership in and connection with said society, likewise all our rights, interests and privileges as members thereof; and further in consideration of the sum of five thousand ($5,000) dollars in cash paid to us out of the funds of said society by John S. Duss and Samuel Sieber, trustees, receipt thereof is hereby acknowledged, we do each hereby release, cancel and discharge any and all claims whatsoever which we or either of us, our heirs, assigns or lawful representatives may or could ever have against said society or its trustees, its property or assets or any part thereof, we each hereby declaring all such claims to be fully compensated, settled, released and discharged. And we do each further declare that we have accepted jointly and severally said sum of five thousand ($5,000) dollars, and have surrendered, compromised, settled, released and discharged all claims that we or our heirs, assigns or lawful reprepsentatives have or could have against said society, its trustees, its property or assets or any part thereof, entirely at our own solicitation and without any invitation, request or solicitation so to do, by said trustees or either of them in the full knowledge of the fact that said society owns, in addition to its property at Economy and Leetsdale, several thousand acres of land in Michigan, and in Warren County, Pa., also certain tracts of land in Allegheny County, Pa., also stocks and bonds in various railroads, mining, manufacturing and bridge companies to the nominal amount of several hundred thousand dollars; also various judgments, mortgages and unsold lots in Beaver Falls and New Brighton of the nominal value of several hundred thousand dol-

lars; also while it may be possible that said Society may have a large amount of property after the payment of its debts we are entirely satisfied to accept as our full share and interest therein said five thousand ($5,000) dollars, and that we or either of us will never hereafter make any claim for further or other payment of any sum or sums whatever, nor for the delivery of any other property of said society to us or either of us, no matter what may be the value of the property and assets of said society, after payment of its debts; all such claims thereto being by us and either of us hereby expressly barred and discharged.

Witness our hands and seals this twenty-third day of June, 1893.

CHRISTINE HOERER,
LEONHARD HOERER.

In the presence of
W. H. BREITENSTEIN.

EXHIBIT NO. 8.

RECEIPT—LENA FRITSCH.

"After having become on the 14th day of February of this year a member of the Harmony Society at Economy, I have this day (October 22nd, 1890) withdrawn myself, of my own free will therefrom, and have ceased to be a member of said society; have also received this day from Henrici and Duss, trustees, ninety-five ($95) dollars, in order to pay my traveling expenses and such like, which sum is in full of all my claims on said society or any member thereof.

"Witness "LENA FRITSCH."

"H. GASSER,
"J. E. HIRSCH."

EXHIBIT NO. 9.

RECEIPT—LENA FRITSCH.

"The undersigned hereby declares that she has received from Messrs. Henrici and Duss, trustees, the sum of twenty-four ($24) dollars for the purpose of an advance to go on a trip, and she promises herewith to repay this sum in case her circumstances in Germany shall make it possible for her to spare this money.

"Witness my hand, this 23rd day of October, 1890.
Attested by "LENA FRITSCH."
J. E HIRSCH.

EXHIBIT NO. 10.

RELEASE OR QUIT CLAIM OF HENRY FEUCHT ET AL.

The undersigned, members of the Harmony Society at Economy, Beaver County, Pennsylvania, being desirous of withdrawing from said society and terminating our membership therein, do declare that we and each of us of our wish and purpose surrender and renounce forever, our membership in and connection with said society, as also all our rights, interests and privileges as members thereof; and further in consideration of the sum of five thousand six hundred dollars to each of us in hand paid, out of the funds of said society by John S. Duss and Samuel Sieber, trustees thereof, the receipt whereof we do each hereby acknowledge (the aggregate amount being twenty-eight thousand), and the further consideration of the conveyance to us of a tract of eight acres more or less, of land situate in the borough of McKees Rocks (late Chartiers), Allegheny County, Pennsylvania, we have released, quit-claimed and discharged and by these presents do each release, quit-claim and discharge forever the said Harmony Society, its trustees and legal representatives and its property and assets of whatever name, real and personal, wherever the same may be or be situate, of and from any and all claim and claims, demand or demands of any and every nature and kind, which we or either of us, as members of said society or personally, have or might or could have or assert or maintain at any time hereafter against said society, its trustees or legal representatives, or its property, whether for labor done, deposits, property or funds received by said society from us at any time, or from any other person or persons for us, or either of us, and whether the same were in any way received in trust or otherwise, so that at no time hereafter shall we or either of us, our or either of our heirs or legal representatives have, assert or maintain any such claim or claims, demand or demands against said society, its trustees or legal representatives, or its property or assets or any part thereof, but thereof and therefrom shall forever be debarred by these presents.

And we and each of us do further declare that we have compromised, settled, released, quit-claimed and discharged said society, its trustees and its property and assets of and from all claim

and claims, demand or demands as aforesaid, with full knowledge of all articles, articles of association, compacts and agreements by and between the members of said society, and any rights we or either of us have or might or could have thereunder, and of the property of said society, that in addition to its property at Economy, it owns several thousand acres of land in Michigan and in Warren County, Pennsylvania, also certain parcels and lots of land in Allegheny County, Pennsylvania, and in Beaver Falls, New Brighton and Rochester, Beaver County, Pennsylvania, etc., as also bonds and stocks of railroad, mining, manufacturing and other corporations of the nominal value of several hundred thousand dollars, and divers judgments, mortgages, notes, etc., and that said society may have property worth several hundred thousand dollars left after the payment of its debts and liabilities, and with full knowledge of all these facts, we have each accepted the sums and consideration aforesaid in full satisfaction of any possible claim we or either of us have or may or can hereafter have or assert against said society.

We do also hereby ratify, approve and confirm the articles of agreement and grant of power to the trustees of said society to borrow money therefor and secure the same by mortgage or mortgages of its property or any portion thereof or otherwise, etc., etc., as contained in the instrument of writing executed by all the then members of the society but Benjamin Feucht and Rebecca, his wife, and Henry Feucht and Margaret his wife, dated the 20th day of December, 1892, and recorded in the office for recording deeds, etc., in and for the County of Beaver aforesaid.

In witness whereof we have hereto set our hands and seals this sixteenth day of May, A. D. 1893.

Signed and sealed and delivered
in presence of

M. F. MECKLEM.

HENRY FEUCHT, [SEAL]
MARGARET FEUCHT, [SEAL]
BENJ. FEUCHT, [SEAL]
REBECCA FEUCHT, [SEAL]
THIRZA FEUCHT. [SEAL]

EXHIBIT NO 12.

RELEASE OR QUIT CLAIM OF SAMUEL AND ELIZABETH F. SIEBER.

We, Samuel Sieber and Elizabeth F. Sieber, husband and wife,

members of the Harmony Society at Economy, Beaver County, Pa., being desirous of terminating said membership and withdrawing from said society, do declare that we do hereby of our own wish and purpose surrender and renounce forever our membership in and connection with said society, likewise all our rights, interests and privileges as members thereof; and further, in consideration of the sum of five thousand ($5,000) dollars in cash paid to us out of the funds of said society by John S. Duss and Gottlieb Riethmueller, trustees, receipt whereof is duly acknowledged, we do hereby release, cancel and discharge any and all claims whatsoever which we, our heirs, assigns or lawful representatives may or could ever have against said society or its trustees, its property or assets or any part thereof, we hereby declaring all such claims to be fully compensated, settled, released and discharged. And we do further declare that we have received said sum of five thousand ($5,000) dollars and have surrendered, compromised, settled, released and discharged all claims that we, or our heirs, assigns or lawful representatives have or could have against said society, its trustees, its property or assets or any part thereof, entirely at our own solicitation and without any invitation, request or solicitation so to do by said trustees or either of them, in the full knowledge of the fact that the said society owns in addition to its property at Economy and Leetsdale several thousand acres of land in Michigan (and in Warren County, Pa.), also certain tracts of land in Allegheny County, Pa., also stocks and bonds in various railroad, mining, manufacturing and bridge companies to the nominal amount of several hundred thousand dollars; also various judgments, mortgages and unsold lots in Beaver Falls and New Brighton of the nominal value of several hundred thousand dollars; also while it may be possible that said society may have a large amount of property after the payment of its debts, we are entirely satisfied to accept as our full share and interest therein the said five thousand ($5,000) dollars, and we will never hereafter make any claim for further or other payment of any sum whatever, nor for the delivery of any other property of said society to us, no matter what may be the value of the property and assets of said society after payment of its debts; all such claims thereto being by us hereby expressly barred and discharged.

Witness our hands and seals this 6th day of July, 1893.

ELIZABETH F SIEBER.
SAMUEL SIEBER.

In the presence of:
FRED. T. GILBERT.

EXHIBIT NO. 12½.

RELEASE OR QUIT CLAIM OF JULIUS AND PAULINE STICKEL AND BERTHA GERATCH.

ECONOMY, PA., MARCH 29TH, 1893.

We, Julius Stickel, Pauline Stickel and Bertha Geratch, being each a member of the Harmony Society at Economy, Beaver County, Pa., and being desirous of terminating said membership and withdrawing from said society, do declare that we do each hereby, of our own wish and purpose, surrender and renounce forever, our membership in and connection with said society, likewise all our rights, interests and privileges as members thereof. And further, in consideration of the sum of three thousand five hundred dollars ($3,500) in cash paid to Julius Stickel, for the joint account of himself, said Pauline Stickel and Bertha Geratch, out of the funds of said society, by John S. Duss and Samuel Sieber, trustees, receipt whereof is hereby acknowledged, we do each hereby cancel, release and discharge any and all claims whatsoever, which we, or either of us, our or either of our heirs or lawful representatives may or could ever have against said society, or its property or assets or any part thereof; we each hereby declaring all such claims to be fully compensated, settled and discharged. And we do each further agree and declare that we jointly and severally accept said sum of money and declare all our claims against said society compensated, settled and discharged, in full knowledge of the condition of said society as disclosed by the affidavits of Dickson and others filed in the suit of Feucht and others against Duss and Sieber, trustees, in Common Pleas Court of Beaver County, Pa., and that we do each know that said society is the owner of stocks and bonds of the nominal value of several hundred thousand dollars, also of judgments, mortgages and unsold real estate and buildings in Beaver Falls of the nominal value of between two and three hundred thousand dollars; also of certain lands in Warren and Forest Counties, Pa., and in Michigan and in Allegheny County, Pa.

Also, that while that it may be that said society may have and be the possessor of several hundred thousand dollars worth of property after paying all its debts, we are entirely satisfied to accept as our share therein the said sum of thirty-five hundred dollars, and that we, nor either of us will ever hereafter make any further claim for other or further payment of any sum, whether to us or either of us, no matter what may be the value of the possessions of said society after payment of its debts. We also further acknowledge the cancellation and release without payment of any money thereon, of an account of said society, against Henry Stickel, dated March 10, 1893, amounting to $120.42, said cancellation and release of

said account being further consideration to us moving, in addition to said thirty-five hundred dollars; in consequence and in consideration whereof, we do each sign this instrument in writing.

JULIUS STICKEL, [SEAL]
PAULINE (X) STICKEL, [SEAL]
BERTHA GERATCH, [SEAL]

In presence of:
J. T. BROOKS.

EXHIBIT "H."

WHEREAS, The Harmony Society at Economy, Beaver County, State of Pennsylvania, is now indebted to various persons in large sums of money, payment of a part of which may be demanded at an early day; and

WHEREAS, The trustees of said society are advised that a suit is about to be brought against it in the name and on behalf of a large number of persons, who claim to be lawful heirs of certain deceased members of said society, the object of said suit being to compel the society to pay large sums of money to said persons as portions of the society's property claimed to be due to said persons as heirs of such deceased members, which claims we regard as totally unfounded; and

WHEREAS, It may become necessary for said trustees, in order that they may obtain money wherewith to pay the debts of the society, and otherwise properly protect its interests, either to borrow money and give securities for the payment thereof, or sell the lands of the society and thereby obtain cash for the payment of said indebtedness; and

WHEREAS, The trustees are advised by counsel that the lands of the society can be better managed, as well as made more available for the purposes of collateral securitity in case loans are to be effected, and in case of sale a more satisfactory title can be given to the purchaser if said lands should be first conveyed to an incorporated company, to be thereafter managed, sold and disposed of by and in the name of said incorporated company, and also avoiding thereby inconvenience and trouble that may arise from time to time by change of trustees, by death or otherwise;

Therefore, We the members of said Harmony Society, do each hereby express our consent with and request that John S. Duss and Gottlieb Riethmueller, the present trustees of said society, shall

forthwith sell, transfer and convey to the Union Company, a corporation duly created and organized under the laws of the State of Pennsylvania, all the lands, tenements and hereditaments situated in Allegheny and Beaver Counties, Pennsylvania, now owned and held by said trustees for the benefit of the said society, to the end that all said lands, tenements and hereditaments may be owned, held and managed by said incorporated company, and be sold and otherwise disposed of from time to time in pursuance of proper corporate action as may be determined by the directors and officers of said incorporated company.

The capital stock of said incorporated company, however, to be owned and held by the said trustees for the benefit of the society, in accordance with and on the terms and conditions of the articles of association of said society and the ratifications and modifications thereof, as the same now exists, to the extent of three hundred and ninety-seven thousand five hundred ($397,500) dollars, out of a total capital of four hundred thousand ($400,000) dollars.

WITNESS our hands and seals this 11th day of April, A. D. 1894.

JOHN S. DUSS, [SEAL]
GOTTLIEB RIETHMUELLER, [SEAL]
CONRAD HERMANSDOERFER, [SEAL]
FRANZ GILLMAN, [SEAL]
His
EDWARD X KELLERMAN, [SEAL]
Mark.
FREDERICKA MUNTZ, [SEAL]
Her
MARIA X DIEM, [SEAL]
Mark.
Her
DOROTHEA X HOEHR, [SEAL]
Mark.
REGINA LAUTENSCHLAGER, [SEAL]
LENA WOLFANGEL, [SEAL]
PHILIPINA L. WOLFANGEL, [SEAL]
CHRISTINA RALL, [SEAL]
KAROLINE MOLT, [SEAL]
KATRINA NAGEL, [SEAL]
Her
ELIZABETH X BECK, [SEAL]
Mark.
JOHANNA HERMANSDOERFER, [SEAL]
SUSIE C. DUSS. [SEAL]

COMMONWEALTH OF PENNSYLVANIA, } ss.
COUNTY OF BEAVER, }

On this 11th day of April, A. D. 1894, before me, a justice of the peace in and for said county, came the above named John S. Duss, Gottlieb Riethmueller, Conrad Hermansdoerfer, Franz Gillman, Edward Kellerman, Fredericka Muntz, Maria Diem, Dorothea Hoehr, Regina Lautenschlager, Lena Wolfangel, Philipina L. Wolfangel, Christina Rall, Barbara Boesch, Karoline Molt, Katrina Nagel, Elizabeth Beck, Johanna Hermansdoerfer and Susie C. Duss, and acknowledged the foregoing instrument to be their act and deed for the purposes therein set forth, and desired the same to be recorded as such.

And the said Johanna Hermansdoerfer and Susie C. Duss, being of full age, and by me examined separate and apart from their said husbands, and the contents of the said instrument being by me first fully made known to them, declared that they did voluntarily and of their own free will and accord, sign and seal, and as their act and deed, deliver the same, without any coercion or compulsion of their said husbands.

Witness my hand and seal the day and year aforesaid.

HENRY BREITENSTEIN, [SEAL]
Justice of the Peace.

EXHIBIT NO. 27.

APPLICATION OF UNION COMPANY FOR CHARTER.

To the Governor of the Commonwealth of Pennsylvania:

SIR:—In compliance with the requirements of an Act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved the 29th day of April, A. D. 1874, and the several supplements thereto, the undersigned, all of whom are citizens of Pennsylvania, having associated themselves together for the purpose hereinafter specified, and desiring that they may be incorporated, and that letters patent may issue to them and their successors according to law, do hereby certify:

1st. The name of the proposed corporation is The Union Company.

2nd. Said corporation is formed for the purpose of the purchase and sale of real estate, or for holding, leasing and selling real estate.

3rd. The business of said corporation is to be transacted in

the borough of Beaver, in the County of Beaver, State of Pennsylvania.

4th. Said corporation is to exist for the term of one hundred years.

5th. The name and residence of the subscribers and the number of shares subscribed by each, are as follows:

Name.	Residence.	No. of Shares.
Henry Hice,	Beaver Borough, Pa.,	20 shares.
Richard R. Hice,	Borough of Beaver, Pa.	20 shares.
William S. Morrison,	Borough of Beaver Falls, Pa.	20 shares.
W. J. Stewart,	Borough of Bridgewater, Pa.	20 shares.
Agnew Hice,	Borough of Beaver, Pa.	20 shares.

6th The number of directors of said corporation is fixed at five, and the name and residences of the directors who are chosen directors for the first year are as follows:

Name.	Residence.
Henry Hice,	Borough of Beaver, Pa.
Richard R. Hice,	Borough of Beaver, Pa.,
William S. Morrison,	Borough of Beaver Falls, Pa.
W. J. Stewart,	Borough of Bridgewater, Pa.,
Agnew Hice,	Borough of Beaver, Pa.,

7th. The amount of the capital stock of said corporation is $5,000, divided into one hundred shares of the par value of $50 and $500 , being ten per centum of the capital stock, has been paid in cash to the treasurer of said corporation, whose name and residence is: Agnew Hice, Borough of Beaver, Beaver County, State of Pennsylvania.

HENRY HICE, [SEAL].
RICHARD R. HICE, [SEAL]
W. J. STEWART, [SEAL]
WILLIAM S. MORRISON, [SEAL]
AGNEW HICE. [SEAL]

STATE OF PENNSYLVANIA, } ss.
COUNTY OF BEAVER, }

Before me, the Recorder of Deeds, in and for the county aforesaid, personally came the above named Richard R. Hice, William S. Morrison and Agnew Hice, who in due form of law acknowledged the foregoing instrument to be their act and deed for the purposes therein specified.

Witness my hand and seal of office, the seventeenth day of January, A. D. 1894.

ORIN H. MATHEWS,
[SEAL] *Recorder.*

STATE OF PENNSYLVANIA, } ss.
COUNTY OF BEAVER, }

Personally appeared before me, this seventeenth day of January, A. D. 1894, Richard R. Hice, William S. Morrison and Agnew Hice, who being duly sworn, according to law, depose and say that the statements contained in the foregoing instrument are true.

RICHARD R. HICE,
WILLIAM S. MORRISON,
AGNEW HICE.

Sworn and subscribed before me
the day and year aforesaid.

ORIN H. MATHEWS,
[SEAL] *Recorder.*

STATE OF PENNSYLVANIA, } ss.
BEAVER COUNTY, }

Recorded in the office for recording deeds, etc., in and for said county in Charter Book No. 3, page 140.

Witness my hand and seal of said office this 16th day of February, A. D. 1894.

ORIN H. MATHEWS,
Recorder.
SEAL]

EXHIBIT NO. 28.

AUTHORIZATION OF INCREASE OF CAPITAL STOCK OF UNION COMPANY.

OFFICE OF THE UNION COMPANY.

BEAVER, PENNSYLVANIA, April 11th, 1894.

I hereby certify that the following resolution was adopted at a meeting of the Board of Directors of this Company, held on the fifth day of April, 1894.

Resolved, That a meeting of the stockholders be called to convene at the general office of the company on the fifth day of June, A. D. 1894, to take action on approval or disapproval of the proposed increase of the capital stock of said company from $5,000 to $400,000, and that the secretary be and is hereby directed to give notice thereof as required by law, unless the same be waived by the unanimous consent of the stockholders.

Attest: WILLIAM S. MORRISON,
Secretary.
[CORPORATE SEAL]

WAIVER OF SIXTY DAYS' NOTICE.

..... 1894.

The undersigned, stockholders in the Union Company, who are all the stockholders therein and holders of all the stock of said company to the amount set opposite our several names herein, to wit:

Name.	No. of Shares.
Richard R. Hice,	20
W. J. Stewart,	20
Harvey Hice,	20
Agnew Hice,	20
William S. Morrison,	20

do hereby waive the sixty days' notice of the meeting of the stockholders called for June 5th, 1894, required to be given by the seventh section of the sixteenth article of the Constitution of the State of Pennsylvania, and do hereby signify, by this paper our assent to the increase of the capital stock of said company from $5,000 to $400,000, and desire that the same may be taken as our vote in favor thereof, with like effect as if all the provisions of the Act of Assembly, entitled "An Act to provide for the incorporation and regulation of certain corporations," approved 29th April, 1874, relative to the increase of the capital stock, had been fully complied with.

STATE OF PENNSYLVANIA, }
COUNTY OF BEAVER, } *ss.*

I, William S. Morrison, secretary of the Union Company, being duly sworn, do depose and say that I am the secretary of the said company, that the stock ledger of said company is in my custody, and under my control, and that the list of stockholders given in the above waiver of notice of meeting to be held to vote for or against an increase of capital stock, is a complete list of such stockholders, and that they are the owners of the entire issue of the stock of said company, and that the signatures to said waiver are genuine and in the proper handwriting of the subscribers.

WILLIAM S. MORRISON.

Sworn and subscribed before me
this 11th day of April, 1894.
JAMES F. MERRIMAN,
[SEAL] *Notary Public.*

STATE OF PENNSYLVANIA, }
COUNTY OF BEAVER, } *ss.*

On this 11th day of April, A. D. 1894, personally appeared before me a Notary Public in and for the county aforesaid, R. R. Hice,

W. J. Stewart and William S. Morrison, stockholders, duly appointed judges, by the Board of Directors of the Union Company, to conduct an election of said company, to be held on the eleventh day of April, 1894, to approve or disapprove of an increase of capital stock of said company, who being duly sworn, or affirmed, do depose and say that they will well and truly, according to law, conduct said election to the best of their ability and true return make of the same.

RICHARD R. HICE,
W. J. STEWART,
WILLIAM S. MORRISON.
Judges.

Sworn or affirmed and subscribed before me, the day and year aforesaid.

JAMES F. MERRIMAN,
[SEAL] *Notary Public.*

We, the undersigned judges, appointed by the Board of Directors of The Union Company to conduct an election by the stockholders thereof, for or against an increase of the capital stock of the said company from $5,000 to $400,000, do hereby certify that, after being duly sworn, we held the said election at the office of the said company on the 11th day of April, 1894, the time and place fixed for holding the same, of which sixty days' previous notice by publication was duly waived, and in due form and manner we received the votes of the stockholders of the said company in favor of or against such increase. And at the said election there were voted in favor of the said increase one hundred (100) shares, and against said increase no shares, thereby evincing the consent of the said increase of all of the persons or bodies corporate holding the larger amount in value of the capital stock of the said company.

RICHARD R. HICE,
W. J. STEWART,
WILLIAM S. MORRISON,
Judges.

EXHIBIT NO. 29.

TREASURER'S RETURN OF INCREASE OF CAPITAL STOCK OF THE UNION COMPANY.

To the Hon. William F. Harrity, Secretary of the Commonwealth:

This is to certify that, by virtue of the consent of the stockholders of The Union Company, authorizing an increase of the capital stock thereof, from $5,000 to $400,000, given at an election duly

held for that purpose, on the 11th day of April, A. D. 1894, the capital stock of said company has been increased from $5,000 to $400,000, said additional stock ($395,000), being issued for real estate situate in Allegheny and Beaver Counties, Pennsylvania, which has been conveyed to the company.

JAS. DICKSON,
[SEAL] *Secretary and Treasurer.*

STATE OF PENNSYLVANIA, }
COUNTY OF ALLEGHENY, } *ss.*

James Dickson, above named, being duly sworn, says the facts set forth in the above certificate are true and correct.

JAS. DICKSON.

Sworn and subscribed before me
this 12th day of April, 1894.
JOHN D. MCCUNE,
[SEAL] *Notary Public.*
This return must be made either by president or treasurer.

SUPREME COURT OF THE UNITED STATES.

CHRISTIAN SCHWARTZ *et al.*, *Appellants*,
vs.
JOHN S. DUSS *et al.*, *Appellees.*
} No. 231 October Term, 1901.

ASSIGNMENTS OF ERROR ON APPEAL.

And now, on this 3rd day of February, 1902, came the appellants by George Shiras, 3rd, and S. Schoyer, Jr., their solicitors, and say that the decree dismissing the complaint in said cause is erroneous and against the just rights of the said appellants for the following reasons:

First. That the Court erred in affirming the decree of the Circuit Court of the United States for the Western District of Pennsylvania, which decree is as follows:

> "And now, this 13th day of February, 1899, upon
> "consideration it is ordered, adjudged and decreed that
> "the plaintiffs' bill be, and the same is hereby dismissed;
> "and it is further ordered, adjudged and decreed that the

"plaintiffs pay the costs, including the master's fees, to "be fixed, *sec. reg.* and which, together with his compensa- "tion as examiner, shall be paid to the master in the first "instance by the defendants.—BY THE COURT."

Second. That the Court erred in holding that the appellants were barred from maintaining their bill, and from the relief sought thereby, because the appellants had no claims on the property of the Harmony Society through any of their ancestors, and because if the appellants have such legal demands against the society, those demands have been barred by lapse of time.

Third. That the Court erred in holding that the Harmony Society is in full life, and that there had been no dissolution of the society by the common consent of the members or by their acts.

Fourth. That the Court erred in holding as follows:

"It is not necessary, nor would it be proper for the "Court to express any opinion as to what would be the "legal status and the ultimate disposition of the property "of the Harmony Society were its existence terminated "by the death of all its members, or were the dissolution "of the society otherwise effected. No such questions "are before us; we are not dealing with the assets of a "defunct or dissolved association."

Fifth. That the Court erred in not finding that by the agreement of 1836 all who were then members of the society, and who afterwards became members of the society, became owners in and to an equal undivided share of all the property of the said society, real and personal, which by the agreement of 1836 was converted into a joint and indivisible fund, and that, therefore, upon the event of the dissolution of the association from any cause whatever, in the absence of provisions in that agreement for the distribution of said fund, the said joint and indivisible fund is to be distributed among all persons dying in the society, and the legal heirs and representatives of those who died in the society.

Sixth. That the Court erred in refusing appellants' contention that the trusts created for the benefit of the Harmony Society violated the rule against perpetuities and is therefore void, and in consequence, in default of a remainder over, or other provision, the same reverts to the members of the society if living, and revert, as aforesaid, by way of resulting trust to the donors, or in the event of death to the heirs and legal representatives of those who died members of the society since 1836.

Seventh. That the Court erred in refusing appellants' contention that the Harmony Society, being unincorporated, and not organized for any religious, scientific, charitable or literary purpose,

is incapable of holding real and personal estates, directly or through trustees, for its benefit, and that the trusts created for the benefit of the said society are void and revert by way of resulting trust to the members of the society living, and to the heirs and legal representatives of those who have died members of the society since 1836.

Eighth. That the Court erred in refusing appellants' contention that the purposes and principles, mode of organization and government prescribed and contemplated by the various articles and constitutions of the society, are against public policy, and that the trusts created for the benefit of the said society are therefore void, and revert as aforesaid, by way of resulting trust, to the donors if living and to their heirs and representatives if dead.

Ninth. That the Court erred in refusing plaintiffs' contention that the constitution and agreements of the Harmony Society contemplated no end to the life of the society, and made no provision for such event, and the trusts provided no remainder over upon the death or dissolution of the society from any cause, or upon the failure of the trusts from any cause, and that the said trusts did not create a joint tenancy with right of survivorship in the members, but was an express trust for the society as a society.

Tenth. That the Court erred in holding as follows:

> "There has been no dissolution of the society, either "by the common consent of the members or by their acts. "The membership, indeed, has become greatly reduced, but "the rights of the society as now constituted are as sa- "cred in the eye of the law as they were when the mem- "bership was twenty-fold greater."

Eleventh. The Court erred in refusing to hold that numbers are an essential feature of the principle of communism, as established by the articles of association, and that the paucity of numbers of surviving members disabled the society for maintaining the principles for which the society was founded, or the mode of agreement provided for in the said articles of association.

Twelfth. The Court erred in refusing to hold that the partition of the assets and property of the society among the members just prior to the filing of plaintiffs' bill was not an act of liquidation and dissolution.

Thirteenth. The Court erred in finding that the conveyance to the Union Company did not work a dissolution of the society, and that the same did not wholly terminate the existence of said society, not only as to the government thereof by the Board of Elders and by the members, but also as to the ownership of any property.

Fourteenth. That the Court erred in refusing to appoint a receiver and decree the other reliefs prayed for in the bill.

Fifteenth. That the Court erred in imposing the costs of this case upon the plaintiffs who are admittedly the next of kin of ancestors dying in the society, and who sue as entitled to the trust estates of the society by way of resulting trust.

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Attorneys for Appellants.

SUPREME COURT OF THE UNITED STATES.

SCHWARTZ *et al.*, *vs.* DUSS *et al.* } No. 231. October Term, 1901.

The counsel for the appellants and appellees hereby stipulate with each other that the record to be printed in the appeal shall consist of the following:

Docket entries, bill, answers, master's report, opinion of Court on certified question and opinion of Court on exceptions to master's report, assignments or error, appeal to the United States Circuit Court of Appeals, opinion of the Court, all agreements, articles and constitutions of the society from 1805 to 1894, inclusive charter records of the Union Company, all releases or quit-claims of retiring members between 1890 and date of filing bill.

D. T. WATSON,
Attorney for Appellees.
GEO. SHIRAS, 3RD,
Attorney for Appellants.

February 14th, 1902.